

NATIONAL HISTORIC PRESERVATION ACT AMENDMENTS
OF 1992

JULY 23, 1992.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 684]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 684), to amend the National Historic Preservation Act and the National Historic Preservation Act Amendments of 1980 to strengthen the preservation of our historic heritage and resources, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Historic Preservation Act Amendments of 1992".

SEC. 2. FINDINGS.

Section 1(b) of the National Historic Preservation Act, Public Law 89-665, as amended (16 U.S.C. 470(b)), is amended—

(1) by redesignating paragraphs (2), (3), (4), (5), (6), and (7) as paragraphs (4), (5), (6), (7), (8) and (9); and

(2) by inserting after paragraph (1) the following new paragraphs:

"(2) historic properties, including prehistoric and historic sites, buildings, districts, structures, and objects, prehistoric and historic archaeological resources, prehistoric and historic roads and trails, and places that have figured in the traditions and lifeways of our communities, of indigenous populations and of the

Nation as a whole, are vital links to our past and contribute in major ways to the identity of our Nation and its communities;

"(3) a national preservation program is achieved by extending Federal Government concern to properties of significance to localities, Indian tribes, Native Hawaiians, States, and the Nation in private and public ownership;"

SEC. 3. POLICY.

Section 2 of the National Historic Preservation Act (16 U.S.C. 470-1) is amended—

- (1) in paragraph (2) by inserting "and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiian organizations, and local governments" after "community of nations"; and
- (2) in paragraph (6) by inserting", Indian tribes, and Native Hawaiian organizations" after "local governments".

SEC. 4. REVIEW OF THREATS TO PROPERTIES.

Section 101(a) of the National Historic Preservation Act (16 U.S.C. 470a(a)) is amended at the end thereof by adding the following new paragraph:

"(8) The Secretary shall, at least once every 4 years, in consultation with the Council, make a review in general of threats to properties included in or eligible for inclusion on the National Register, in order to—

"(A) determine what kinds of properties may be in particular danger;

"(B) ascertain the causes of the threats; and

"(C) develop and submit to the President and Congress recommendations for remedial action where appropriate."

SEC. 5. STATE HISTORIC PRESERVATION PROGRAMS.

Section 101(b) of the National Historic Preservation Act (16 U.S.C. 470a(b)) is amended—

- (1) by amending paragraph (2) to read as follows:

"(2) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council and the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with the requirements of this Act. If at any time the Secretary determines that a State program is not consistent with the requirements of this Act, the Secretary shall disapprove the program and suspend, in whole or in part, assistance to the State under subsection (b)(1), unless there are adequate assurances that the program will be made consistent with the requirements of this Act within a reasonable period of time. At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system establishes and maintains substantially similar accountability standards. The Secretary may also conduct periodic fiscal audits of State programs approved under this section."

- (2) in paragraph (3)—

(A) in subparagraph (G), by striking "relating to the Federal and State Historic Preservation Programs; and" and inserting "in historic preservation";

(B) in subparagraph (H), by striking the period at the end thereof and inserting a semicolon; and

(C) by adding at the end thereof the following new subparagraphs—

"(I) consult with appropriate Federal agencies in accordance with this Act on—

"(i) Federal undertakings that may affect historic properties; and

"(ii) the content and sufficiency of any plan developed to protect or to reduce or mitigate harm to such properties;

"(J) advise, assist, and evaluate proposals for rehabilitation projects that may qualify for Federal assistance (including grants, loans, and tax incentives); and

"(K) carry out such additional responsibilities as the Secretary, in consultation with the State Historic Preservation Officer determines to be appropriate, consistent with the purposes of this Act."

- (3) in paragraph (5) by striking "1980" and inserting "1992"; and

- (4) by adding at the end thereof the following new paragraphs:

"(6)(A) Subject to subparagraph (B), the Secretary or the Council may enter into contracts or cooperative agreements with a State Historic Preservation Officer to allow such Officer to carry out their duties within the State in the following areas—

"(i) to identify and preserve historic properties;

"(ii) to determine the eligibility of properties for listing on the National Register;

"(iii) to expand the National Register;

"(iv) to maintain historical and archaeological data bases;

"(v) to certify eligibility for Federal preservation incentives;

"(vi) to comment on, approve, and enforce actions of Federal, State, or local governments, private individuals, and corporations pursuant to this Act, the Internal Revenue Code of 1986, and other Federal law; and

"(vii) to exercise such other authority as the Secretary or the Council determines to be appropriate.

"(B) The Secretary or the Council may enter into a contract or cooperative agreement under subparagraph (a) only if—

"(i) the State Historic Preservation Officer has requested the additional authority;

"(ii) the Secretary has approved the State historic preservation program pursuant to section 101(b) (1) and (2);

"(iii) the State Historic Preservation Officer agrees to carry out the additional authority in a timely and efficient manner acceptable to the Secretary or the Council, as the case may be;

"(iv) the Secretary or the Council agrees to provide for a timely review of decisions when requested; and

"(v) the Secretary or the Council and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such authority."

6. CERTIFICATION OF LOCAL GOVERNMENTS.

Section 101(c) of the National Historic Preservation Act (16 U.S.C. 470a(c)) is amended by adding at the end thereof the following new paragraph:

"(4) For the purposes of this section the term—

"(A) 'designation' means the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and

"(B) 'protection' means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to subsection (c)."

7. TRIBAL HISTORIC PRESERVATION PROGRAMS.

(a) REVISION OF EXISTING LAW.—Section 101 of the National Historic Preservation Act (16 U.S.C. 470a) is amended—

(1) by redesignating subsections (d), (e), (f), (g) and (h) as subsections (e), (f), (g), (h), and (i); and

(2) by inserting after subsection (c) the following new subsection:

(d)(1)(A) The Secretary shall establish a program to assist Indian tribes and Native Hawaiian organizations in preserving their unique cultural resources. The program shall have as its purpose the preservation, retention, and enhancement of historic properties and cultural traditions of Indian tribes and Native Hawaiians. The Secretary shall foster communication and cooperation between Indian tribes and Native Hawaiian organizations and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that types of historic properties and all public interests in such properties are given consideration, and to encourage coordination among Indian tribes, Native Hawaiian organizations, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

(B) The program under subparagraph (A) shall be developed in such a manner as to ensure that tribal and Native Hawaiian values are taken into account. The Secretary may waive or modify requirements of this section to conform to the cultural timing of tribal or Native Hawaiian heritage preservation goals and objectives. The tribal and Native Hawaiian programs implemented by specific tribes and Native Hawaiian organizations may vary in scope, as determined by each tribe's chief governing authority and Native Hawaiian organizations, authorized officials.

(C) The Secretary shall consult with Indian tribes, Native Hawaiian organizations, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (A) by not later than October 1, 1993.

(2) A tribe or a Native Hawaiian organization may assume all or any part of the functions of a State Historic Preservation Officer under subparagraph (b)(3), together

er with the concomitant responsibilities under subsections (b)(2) and (3), with respect to tribal land, as such responsibilities may be modified for tribal programs through regulations issued by the Secretary if—

"(A) the tribe's chief governing authority or organization's chief executive official so requests;

"(B) the tribe or organization designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or the organization's chief executive official or as a tribal ordinance may otherwise provide;

"(C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

"(D) the Secretary determines, after consultation with the tribe or organization, the appropriate State Historic Preservation Officer, the Council (if the tribe or organization proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106), and other tribes or organizations, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program—

"(i) that the tribal preservation program is sufficient to carry out the functions specified in the plan provided under subparagraph (C); and

"(ii) that the plan defines any remaining responsibilities of the State Historic Preservation Officer; and

"(E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan.

"(3) In consultation with interested Indian tribes, Native Hawaiian organizations, and other Native American organizations and the National Conference of State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) with respect to tribal programs that assume responsibilities under paragraph (2).

"(4) At the request of a tribe or Native Hawaiian organization whose preservation program has been approved to assume responsibilities pursuant to paragraph (3), the Secretary shall enter into contracts or cooperative agreements with such tribe or organization, all or any part of the authorities described in subsection (b)(6) on tribal land, if—

"(A) the Secretary and the tribe or organization agree on additional financial assistance, if any, to the tribe or organization for the costs of carrying out such authorities;

"(B) the Secretary ensures that the tribal historic preservation program is sufficient to carry out the contract or cooperative agreement and this Act; and

"(C) the contract or cooperative agreement specifies any continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by—

"(i) the tribes or organizations traditional cultural authorities;

"(ii) representatives of other tribes or organizations whose traditional lands are under the jurisdiction of the tribe or organization to which the Secretary's preservation responsibilities are delegated; and

"(iii) the interested public.

"(5) The Council may enter into an agreement with an Indian tribe or a Native Hawaiian organization to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106, if the Council, after consultation with the tribe or organization and appropriate State Historic Preservation Officers, determines that the tribal historic preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

"(6) At the request of an Indian tribe or a Native Hawaiian organization whose preservation program has been approved to assume responsibilities pursuant to paragraph (2), and with the concurrence of the Council (after consultation with the affected State Historic Preservation Officer), the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies may enter into contracts or cooperative agreements to carry out such part of their preservation functions and responsibilities as the tribe or organization may request on tribal land to the tribal preservation official, or, when a tribe or organization so requests, to the appropriate State Historic Preservation Officer, including any such agency's responsibility to consult with the Council and the State Historic Preservation Officer pursuant to section 106.

"(7)(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

"(B) In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A)."

(b) CONFORMING AMENDMENT.—Section 110(c) of the National Historic Preservation Act (16 U.S.C. 470h-2(c)) is amended by striking "101(g)" and inserting "101(h)".

SEC. 8. MATCHING GRANTS.

Section 101(e) of the National Historic Preservation Act, as redesignated by section 7(a)(1) of this Act, is amended—

(1) by amending paragraph (1) to read as follows:

"(1)(A) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act and any other Act affecting historic resources.

"(B) The Secretary shall consult with the Council regarding the provision of grants related to the carrying out of authorities under subsection (b)(6)."; and

(2) by adding at the end thereof the following new paragraphs—

"(4) The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be waived or Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribes or organizations conducting its responsibilities pursuant to this section.

"(5)(A) As part of the program of matching grant assistance to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled 'Joint Resolution to approve the Compact of Free Association' between the United States and the Government of Palau, and for other purposes' (48 U.S.C. 1681 note). It shall be the goal of the program to ensure at the termination of the Compacts that each Micronesian State has established historic and cultural needs of those emerging nations, thus guaranteeing the continuation of the programs. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations in order to achieve that goal.

"(B) The amounts to be made available to the Micronesian States shall be determined by the Secretary on the basis of needs as determined by the Secretary. Matching funds shall not be required."

SEC. 9. EDUCATION AND TRAINING.

Section 101 of the National Historic Preservation Act (16 U.S.C. 470a), as amended by section 6, is amended by adding at the end thereof the following new subsection:

(j)(1) The Secretary shall, in consultation with other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

"(2) The education and training program described in paragraph (1) shall include—

"(A) new standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;

"(B) increased preservation training opportunities for other Federal, State, tribal, and local government workers, students, and individuals with an avocational interest in preservation;

"(C) inclusion of provisions in federally-sponsored survey and excavation work to afford an opportunity for the participation of avocational archaeologists;

"(D) special assistance to historically black colleges and universities and to tribal colleges and colleges with a high enrollment of Native Americans or Native Hawaiians to establish preservation degree programs;

"(E) dissemination of information on preservation technologies;

"(F) implementation of a coordinated national informational and media program (such as public service announcements) on preservation topics;

"(G) distribution of model preservation curricula for elementary and high schools and adult education programs;

"(H) preservation internship programs for United States and foreign students;

"(I) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in existing Federal training and development programs; and

"(J) support for research, analysis, curation, interpretation, and display related to preservation."

SEC. 10. REQUIREMENTS FOR AWARDING OF GRANTS.

Section 102 of the National Historic Preservation Act (16 U.S.C. 470b) is amended—

(1) by amending subsection (a)(3) to read as follows:

"(3) for more than 60 percent of the aggregate costs of carrying out projects and programs specified in section 101(b)(3) in any one fiscal year, except that the Secretary may provide additional financial assistance for costs incurred by a State Historic Preservation Office in carrying out activities pursuant to section 101(b)(6).";

"(2) in subsection (b) by striking ", in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary"; and

"(3) by adding at the end thereof the following new subsection:

"(d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such."

SEC. 11. APPORTIONMENT OF GRANT FUNDS.

Section 103 of the National Historic Preservation Act (16 U.S.C. 470c) is amended—

"(1) in subsection (a) by striking "for comprehensive statewide historic surveys and plans under this Act", and inserting "for the purposes of this Act"; and

"(2) in subsection (b) by striking "The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans."

SEC. 12. FEDERAL AGENCY HISTORIC PRESERVATION PROGRAMS.

Section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2) is amended—

"(1) in subsection (a)(1) by striking "101(f)" and inserting "101(g)";

(2) by amending subsection (a)(2) to read as follows:

"(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Council and the Secretary and in cooperation with affected State Historic Preservation Officers, tribal preservation programs, and certified local governments, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Each agency shall implement such a program that ensures—

"(A) that historic properties under the jurisdiction or control of the agency are identified, evaluated, and nominated to the National Register;

"(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register—

"(i) are managed and maintained in a way that reasonably preserves their historic, archaeological, architectural, cultural, and other values; and

"(ii) are not inadvertently damaged, disposed of or allowed to deteriorate;

"(C) that the preservation, management, and maintenance of such properties not under the jurisdiction or control of the agency, but subject to possible effect are given full consideration in planning;

"(D) that the agency's preservation-related activities are carried out in cooperation with historic preservation planning activities of other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector; and

"(E) that the agency's procedures for compliance with section 106—

"(i) are consistent with regulations issued by the Council pursuant to section 211;

"(ii) provide for identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, regarding the means by which adverse effects on such properties will be resolved; and

"(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(c))."; and

(3) by adding at the end thereof the following new subsections:

"(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

"(l) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register and for which the Federal agency has not entered into an agreement with the Council and the appropriate State Historic Preservation Officer, the head of the Federal agency shall approve the undertaking only if the head of the agency has determined that implementing the recommendations contained in the comments of the Council pursuant to section 106 is not feasible and prudent. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all its parts.

"(m) When the Council finds, after consultation with the Secretary, State Historic Preservation Officers, affected Indian tribes, Native Hawaiian organizations, local governments, and the interested public, that a Federal agency's procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) provide adequately for consideration of properties of cultural and historical significance, including—

"(1) the identification of effects on such properties; and

"(2) the development and implementation of agreements with affected parties and others regarding the means by which adverse effects will be resolved, the agency may comply with those procedures in place of regulations promulgated by the Council in order to meet the requirements of sections 106, 110(a)(2), 110(b), and 111 of this Act, as applicable. The Council shall review the procedures of such an agency from time to time to ensure that they continue to provide adequately for consideration of properties of cultural and historical significance."

SEC. 13. LEASE OR EXCHANGE OF FEDERAL HISTORIC PROPERTIES.

Section 111 of the National Historic Preservation Act (16 U.S.C. 470h-3) is amended in subsection (a) by striking "may, after consultation with the Advisory Council on Historic Preservation, lease" and inserting "after consultation with the Council, shall establish and implement adaptive use alternatives for historic properties that are not needed for current or projected agency purposes, and may lease".

SEC. 14. DISPOSITION OF ARCHAEOLOGICAL MATERIALS.

Title I of the National Historic Preservation Act (16 U.S.C. 470 et seq.) is amended by adding at the end thereof the following new section:

"SEC. 112. (a) Each Federal agency that is responsible for the protection of archaeological resources or that conducts, causes to be conducted, or permits archaeological surveys or excavations pursuant to this Act or any other law shall ensure that—

"(1)(A) contractors supervising archaeological surveys and excavations meet professional standards under regulations developed by the Secretary in consultation with the Council and other affected agencies, taking into account, and, when appropriate, utilizing the pertinent standards and certification systems of, international, national, State, and local archaeological organizations;

"(B) agency personnel supervising archaeological surveys and excavations meet qualification standards established by the Office of Personnel Management, in consultation with the Secretary, in accordance with standards for archaeologists under the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.);

"(2) programs for the protection of archaeological resources and for archaeological surveys and excavations are designed, when appropriate, to involve and inform the interested public, including volunteers, professional societies, avocational groups, educational institutions, Indian tribes, and Native Hawaiian organizations;

"(3) archaeological surveys and excavations are designed, to the extent feasible, to address research topics of demonstrable significance to the sciences and humanities; and

"(4) records and other data produced by archaeological surveys and excavations are maintained in perpetuity in appropriate data bases and disseminated to potential users.

"(b) In order to promote the preservation of archaeological resources on private land that are eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to—

"(1) provide information to the owners of private lands containing archaeological resources that have a demonstrated or likely research significance, with information about the need for protection of those resources, and the available means of protection;

"(2) encourage owners to preserve archaeological resources in place and offer the owners of those resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

"(3) encourage the protection of Native American cultural items (within the meaning of section 2 (3) and (9) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 (3) and (9)) and of properties of religious or cultural importance to Indian tribes, Native Hawaiian organizations, or other Native American groups; and

"(4) encourage owners who are undertaking excavations to—

"(A) conduct excavations and analyses that meet the standards for federally-sponsored excavations established pursuant to this Act;

"(B) register artifacts found within the archaeological resource with an antiquities registration program;

"(C) donate or lend artifacts of great significance in current or likely research to an appropriate research institution;

"(D) allow access to artifacts for research purposes; and

"(E) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(a)(2) (B) and (C)), give notice to and consult with such Indian tribe or Native Hawaiian organization."

SEC. 15. INTERSTATE AND INTERNATIONAL TRAFFIC IN ANTIQUITIES.

Title I of the National Historic Preservation Act (16 U.S.C. 470 et seq.), as amended by section 13, is amended by adding at the end thereof the following new section:

"Sec. 113. (a) In order to facilitate the control of illegal interstate and international traffic in antiquities, the Council, in consultation and cooperation with the Secretary, shall study and report the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

"(b) In conducting the study described in subsection (a) the Council shall consult with other Federal agencies that conduct, cause to be conducted, or permit archaeological surveys or excavations and with State Historic Preservation Officers, archaeological organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

"(c) Not later than 18 months after the date of enactment of this section, the Council shall submit to Congress a report detailing its findings and recommendations from the study described in subsection (a).

"(d) There are authorized to be appropriated not more than \$500,000 for the study described in subsection (a), such sums to remain available until expended."

SEC. 16. MEMBERSHIP OF ADVISORY COUNCIL ON HISTORIC PRESERVATION.

Section 201(a) of the National Historic Preservation Act (16 U.S.C. 470i(a)) is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting ", and"; and

(3) by adding at the end thereof the following new paragraph:

"(11) one member of an Indian tribe or Native Hawaiian organization appointed by the President."

SEC. 17. REGULATIONS OF THE ADVISORY COUNCIL ON HISTORIC PRESERVATION.

Section 211 of the National Historic Preservation Act (16 U.S.C. 470s) is amended by striking the period at the end of the first sentence and inserting "in its entirety".

SEC. 18. DEFINITIONS.

(a) **AMENDMENT AND ADDITION OF DEFINITIONS.**—Section 301 of the National Historic Preservation Act (16 U.S.C. 470w) is amended—

(1) in paragraph (1) by striking "Code," and all that follows through the end of the paragraph, and inserting in lieu thereof, "Code";

(2) in paragraph (2) by striking "the Trust Territories of the Pacific Islands" and inserting "the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau";

(3) by amending paragraph (4) to read as follows:

"(4) 'Indian tribe' or 'tribe' means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.";

(4) in paragraph (5) by striking "Register" and all that follows through the end of the paragraph and inserting "Register, including artifacts, records, and material remains related to such a property or resource.";

(5) by amending paragraph (7) to read as follows:

"(7) 'undertaking' means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

"(A) those carried out by or on behalf of the agency;

"(B) those carried out with Federal financial assistance;

"(C) those requiring a Federal permit, license, or approval; and

"(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.";

(6) in paragraph (8) by—

(A) striking "maintenance and reconstruction," and inserting "maintenance, study, interpretation, reconstruction, and education and training regarding the foregoing activities";

(7) in paragraph (9) by striking "urban area" and inserting "area";

(8) in paragraph (10) by striking "urban area of one or more neighborhoods and" and inserting "area";

(9) in paragraph (13)(A) by striking "archaeology" and inserting "prehistoric and historic archaeology, folklore and cultural anthropology,"; and

(10) by adding at the end thereof the following new paragraphs:

"(14) 'tribal land' means—

"(A) all lands within the exterior boundaries of any Indian reservation;

"(B) all dependent Indian communities; and

"(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108), and section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 17, 1959 (Public Law 86-3; 73 Stat. 5).

"(15) 'Traditional cultural authority' means an individual in a Native American group, Native Hawaiian, or other social or ethnic group who is recognized by members of the group as an expert on the group's traditional history and cultural practices.

"(16) 'Certified local government' means a local government whose local historic preservation program has been certified pursuant to section 101(c).

"(17) 'Cultural resources' means the tangible and intangible elements of traditional culture, including—

"(A) historic resources;

"(B) American folklife, as that term is defined in section 3(l) of the American Folklife Preservation Act (20 U.S.C. 2102(l)); and

"(C) Native American cultural values protected by the American Indian Religious Freedom Act (42 U.S.C. 1996).

"(18) 'Council' means the Advisory Council on Historic Preservation established by section 201.

"(19) 'Native Hawaiian' means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

"(20) 'Native Hawaiian organization' means any organization which—

"(A) serves and represents the interests of Native Hawaiians;

"(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and

"(C) has expertise in Native Hawaiian Affairs, and includes the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kapuna O Hawaii'i Nei, an organization incorporated under the laws of the State of Hawaii."

(b) **TECHNICAL AMENDMENT.**—Section 201(a) of the National Historic Preservation Act (16 U.S.C. 470i(a)) is amended by striking "(hereafter referred to as the 'Council')".

SEC. 19. COOPERATIVE AGREEMENTS FOR THE PERFORMANCE OF FUNCTIONS OF A FEDERAL AGENCY.

Section 302 of the National Historic Preservation Act (16 U.S.C. 470w-1) is amended by inserting after "Act," the following: "and, in consultation with the Council, enter into an agreement with the Council, a State Historic Preservation Officer, or a tribal preservation official to carry out the functions of the Federal agency within a State or within tribal land, and may make funds available to the Council, State Historic Preservation Officer, or tribal preservation official for that purpose,".

SEC. 20. ACCESS TO INFORMATION.

Section 304 of the National Historic Preservation Act (16 U.S.C. 4702-3) is amended to read as follows:

"(a) The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may—

"(1) cause a significant invasion of privacy;

"(2) risk harm to the historic resource; or

"(3) impede the use of a traditional religious site by practitioners.

"(b) When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

"(c) When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b)."

SEC. 21. NATIONAL CENTER FOR PRESERVATION TECHNOLOGY.

(a) The National Historic Preservation Act, as amended, is further amended by adding at the end thereof the following new title—

"TITLE IV—NATIONAL CENTERS FOR PRESERVATION TECHNOLOGY.

"Sec. 401. The Congress finds and declares that the complexity of technical problems encountered in preserving historic properties and the lack of adequate dissemination of technical information to preserve such properties require a national initiative to coordinate and promote research, disseminate information, and provide training about preservation technologies.

"Sec. 402. For the purposes of this title, the term—

"(1) 'Board' means the National Preservation Technology Board established pursuant to section 404;

"(2) 'Center' means the National Center for Preservation Technology established pursuant to section 403; and

"(3) 'Secretary' means the Secretary of the Interior.

"Sec. 403. (a) There is hereby established within the Department of the Interior a National Center for Preservation Technology. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

"(b) The purposes of the Center shall be to—

"(1) develop and disseminate preservation and conservation technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;

"(2) develop and facilitate training for Federal, State, and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

"(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

"(4) coordinate and promote the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector;

"(5) serve as a liaison with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums; and

"(6) conduct such other activities as may be necessary to fulfill the purposes of this title.

"(c) Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through regional centers, laboratories, and service facilities designated or established under section 405.

"(d) The Center shall be headed by an Executive Director appointed by the Secretary in consultation with the Board.

"(e) The Secretary shall provide the Center with such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

"Sec. 404. (a) There is hereby established a Preservation Technology Board.

"(b) The Board shall—

"(1) provide leadership, policy advice, coordination, and professional oversight to the Center;

"(2) advise on priorities and the allocation of funds among the activities of the Center; and

"(3) submit an annual report to the President and the Congress.

"(c) The Board shall be comprised of—

"(1) at least 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, and other public, private, and international organizations; and

"(2) at least 5 members appointed by the Secretary on the basis of outstanding professional qualifications or experience in the disciplines included in the scope of the work of the Center.

"Sec. 405. (a) The Secretary, in consultation with the Board, shall select regional preservation technology centers from among applicants with a demonstrated institutional commitment to the purposes of the Center.

"(b) Such centers, covering regional areas of the United States (as specified by the Secretary, in consultation with the Board), shall develop, coordinate, and implement preservation technology programs consistent with the purposes of the Center.

"(c) Eligible applicants may include Federal and non-Federal laboratories, museums, universities, non-profit or for-profit corporations, offices and Cooperative Park Study Units of the National Park Service, State Historic Preservation Offices, and tribal preservation offices.

"(d) The Secretary, in consultation with the Board, may establish or designate analytical or technical research laboratories and service facilities to further the purposes of the Center.

"Sec. 406. The Center may accept—

"(a) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

"(b) transfers of funds from other Federal agencies.

"Sec. 407. Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public and private entities to carry out the Center's responsibilities under this Act."

"(b) Nothing in this section shall affect existing related programs and activities currently undertaken by the National Park Service at Williamsport, Pennsylvania or Monocacy National Battlefield, Maryland.

"(c) There are authorized to be appropriated for the establishment, operation, and maintenance of the Center and any regional preservation technology center, such sums as may be necessary."

PURPOSE OF THE MEASURE

The purpose of S. 684, as ordered reported, is to amend the National Historic Preservation Act to facilitate the preservation of historic resources.

BACKGROUND AND NEED

Since its inception in 1916, the National Park Service has been responsible for protecting historic resources on federal lands set aside as units of the National Park System. The Park Service's original preservation authority arises from the Organic Act of 1916, which provides that the Park Service is to "conserve the scenery and the natural and historic objects" located within units of the National Park System.

The 1916 Organic Act and the Historic Sites Act of 1935 provide the National Park Service with its authority and direction to administer historic resources located within units of the National Park System. To help protect those historic resources located on Federal and non-Federal land not within units of the National Park System, Congress enacted the National Historic Preservation Act in 1966. The Act, along with amendments passed in four subsequent Congresses, establishes a comprehensive program administered through the National Park Service, for the protection of national, State and local historic resources.

Major provisions of the 1966 Act include the establishment of the National Register of Historic Places (which now includes some 55,000 items), the official list of national cultural and historic resources worthy of preservation; the appointment of a State Historic Preservation Officer (SHPO) by each Governor to administer the historic preservation program within each State; establishment of the Historic Preservation Fund, to provide a funding source for both State and local grants, and for the National Trust for Historic Preservation; and the establishment of the Advisory Council on Historic Preservation, to advise the President and Congress on matters relating to historic preservation and to make recommendations to help coordinate activities of Federal, State and local agencies and private institutions and individuals relating to historic preservation.

One of the most important provisions of the National Historic Preservation Act—the responsibilities of Federal agencies for the protection of historic resources—is set forth in sections 106 and 110. Specifically, section 106 provides that prior to the approval of the expenditure of any Federal funds and prior to the issuance of any license, each agency shall take into account the effect of an undertaking on any district, site, building, structure, or object that is included on, or eligible for inclusion on the National Register. The agency is also required to afford the Advisory Council on Historic Preservation the opportunity to comment with regard to such undertaking.

Section 110 further elaborates on the responsibilities of Federal agencies in the management and protection of historic sites, buildings and objects. It requires that the heads of all Federal agencies assume responsibility for the preservation of historic properties which are owned or controlled by such agency.

S. 684, as ordered reported, would amend the National Historic Preservation Act to clarify, strengthen, and streamline several provisions of the Act. S. 684 would, for the first time, specifically include Indian tribes and Native Hawaiian organizations in the historic preservation partnership. The bill directs the Secretary to establish a program to assist Indian tribes and Native Hawaiian organizations in preserving their cultural heritage, and authorizes the Secretary to allow a tribe to assume all or any part of the functions of a State Historic Preservation Officer on tribal lands if the Secretary determines that the tribe has an appropriate historic preservation plan, and other specified conditions are satisfied.

In order to eliminate duplicative Federal and State reviews of the same historic preservation project, the legislation would authorize the Secretary or the Advisory Council to enter into a contract or cooperative agreement with a State Historic Preservation Officer (SHPO) to allow the SHPO to carry out any or all of the specified historic preservation functions of the Secretary or the advisory Council within the State.

The bill would also require the Secretary to establish a comprehensive education and training program to increase public awareness of preservation concerns and to expand training opportunities in the historic preservation field. Finally, S. 684 would establish a National Center for Preservation Technology. The purpose of the center would be to research, develop and disseminate historic and prehistoric restoration and preservation technologies.

S. 684 adds provisions to strengthen the Federal protection process for historic properties. The bill would prohibit Federal assistance to parties who "significantly adversely affect" historic properties, before seeking Federal assistance, with the intent to avoid the requirements of section 106. This provision seeks to eliminate so-called "anticipatory demolition," where an individual seeking Federal assistance demolishes an historic structure before making the application for assistance, in order to avoid historic preservation review provisions.

The bill also requires that in the very few cases involving section 106 where the Advisory Council and the agency do not agree on preservation measures, the agency must follow the recommendations of the Advisory Council unless the head of the agency determines that such recommendations are not feasible and prudent. Currently, section 106 of the National Historic Preservation Act requires only that an agency consult with the Advisory Council.

LEGISLATIVE HISTORY

S. 684 was introduced by Senator Fowler and ten other Senators on March 19, 1991. The Subcommittee on Public Lands, National Parks and Forests held hearings on S. 684 in Macon, Georgia on September 5, 1991, and in Augusta, Georgia, on September 6, 1991. The Subcommittee held a hearing in Washington on March 19, 1992. Last Congress the Subcommittee held hearings on related measures, S. 1578 and S. 1579, in Savannah, Georgia and Washington.

At the business meeting on June 24, 1992, the Committee on Energy and Natural Resources ordered S. 684, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on June 24, 1992, by a majority vote of a quorum present, recommends that the Senate pass S. 684, if amended as described herein.

The roll call vote on reporting the measure was 19 yeas, 1 nay, as follows:

YEAS	NAYS
Mr. Johnston	Mr. Wallop
Mr. Bumpers	
Mr. Ford	
Mr. Bradley ¹	
Mr. Bingaman ¹	
Mr. Wirth ¹	
Mr. Conrad	
Mr. Akaka	
Mr. Fowler	
Mr. Shelby	
Mr. Wellstone ¹	
Mr. Hatfield ¹	
Mr. Domenici ¹	
Mr. Murkowski	
Mr. Nickles	
Mr. Burns	
Mr. Craig	
Mr. Seymour	
Mr. Garn ¹	

¹ Indicates voted by proxy.

COMMITTEE AMENDMENT

During the consideration of S. 684, the Committee adopted an amendment in the nature of a substitute. The amendment makes a number of clarifying and conforming changes to S. 684 as introduced, and incorporates many of the recommendations made to the Committee by the Department of the Interior. The amendment is explained in detail in the section-by-section analysis, below.

SECTION-BY-SECTION ANALYSIS

Section 1 designates the Act as the "National Historic Preservation Act Amendments of 1992."

Section 2 amends section 1(b) of the National Historic Preservation Act, as amended, ("NHPA") to add two new findings to the Act.

Section 3 amends section 2 of NHPA to add Indian tribes and Native Hawaiian organizations to the national historic preservation partnership.

Section 4 amends section 101(a) of NHPA to require the Secretary of the Interior (the "Secretary"), at least once every four

years, to make a review in general of threats to properties included in or eligible for inclusion on the National Register of Historic Places.

Section 5 amends section 101(b) of NHPA pertaining to the administration of State historic preservation programs.

Paragraph (1) provides that at least every four years, the Secretary is to evaluate a State historic preservation program to determine whether the program is consistent with the requirements of this Act.

Paragraph (2) revises the list of State Historic Preservation Officer responsibilities to reflect existing activities including review of Federal undertakings and applications for rehabilitation tax credits.

Paragraph (3) updates the date used in determining how long an existing approved State Historic Preservation program has to gain approval under NHPA, from 1980 to 1992.

Paragraph (4) authorizes the Secretary or the Advisory Council on Historic Preservation ("Advisory Council") to enter into a contract or a cooperative agreement with a State Historic Preservation Officer ("SHPO") to allow the SHPO to carry out specified preservation authorities of the Secretary or the Advisory Council within the State.

Section 6 amends section 101(c) of NHPA to add two new definitions pertaining to the certification by a SHPO of local preservation programs.

Section 7 amends section 101 of NHPA to establish and define the role of tribal and Native Hawaiian organization preservation programs within the national preservation partnership.

Paragraph (1) makes conforming changes.

Paragraph (2) adds a new subsection 101(d) to NHPA which directs the Secretary to establish a program to assist Indian tribes and Native Hawaiian organizations in preserving their cultural resources. The Secretary is directed to "foster communication and cooperation between Indian tribes and Native Hawaiian organizations and State Historic Preservation Officers." The program is to be initiated by October 1, 1993.

Paragraph 101(d)(2) sets forth provisions for a tribe or Native Hawaiian organization to assume all or any part of the functions of a SHPO, together with the concomitant responsibilities under subsections (d)(2) and (d)(3), for historic preservation on tribal land, if several criteria are met.

Paragraph 101(d)(3) directs the Secretary to implement procedures for apportioning funds to tribal preservation programs which assume preservation responsibilities under this section.

Paragraph 101(d)(4) directs the Secretary, at the request of a tribe or Native Hawaiian organization with an approved preservation program, to enter into a contract or cooperative agreement to allow the tribe or Native Hawaiian organization to carry out historic preservation responsibilities on tribal land.

Paragraph 101(d)(5) authorizes the Advisory Council to enter into an agreement with tribes or Native Hawaiian organizations to allow qualified tribal procedures to be used in place of Federal procedures for the issuance of permits for undertakings on tribal lands.

Paragraph 101(d)(6) provides that at the request of a tribe or Native Hawaiian organization with an approved preservation program, and with the concurrence of the Advisory Council, the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies may enter into contracts or cooperative agreements to carry out such preservation functions as the tribe or Native Hawaiian organization shall request.

Paragraph 101(d)(7) stipulates that properties of religious and cultural significance to a tribe may be determined to be eligible for inclusion on the National Register, and requires that tribes, which are associated with such properties be consulted in advance of Federal undertakings under section 106 of NHPA.

Section 8 provides authority for the Secretary to make matching grants to the States, and direct grants to Indian tribes the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau for the purpose of carrying out the NHPA.

Section 9 amends section 101 of NHPA to require the Secretary to establish a comprehensive education and training program, designed to increase public awareness of preservation concerns, to increase opportunities for individuals with an avocational interest in preservation to participate in the Federal program, and to expand training opportunities for avocational archaeologists (including special assistance to Historically Black Colleges and Universities and to schools with a high enrollment of Native Americans or Native Hawaiians).

Section 10 amends section 102 of NHPA to streamline the process for awarding grants to States and the National Trust for Historic Preservation.

Section 11 amends section 103 of NHPA to clarify provisions dealing with the Secretary's authority to apportion grants to States.

Section 12 amends section 110 of NHPA to clarify and strengthen the preservation responsibilities of Federal agencies. The section requires each agency to establish a preservation program for the identification, evaluation, nomination to the National Register of Historic Places, and protection of historic properties, and specifies the content of that program.

Paragraph (3) adds the following subsections to the end of section 110:

Subsection (k) provides that each Federal agency is required to ensure that the agency will not grant any form of Federal assistance to parties who, with intent to avoid the requirements of section 106 of NHPA, "significantly adversely affected" (or having legal power to prevent it, allowed such significant adverse effect to occur) a historic property to which the Federal grant would relate, unless the agency, after consultation with the Advisory Council, determined that circumstances justify granting Federal assistance despite the adverse effect. This subsection is intended to address the situation in which a party demolishes a historic property and then applies for Federal assistance in order to escape historic preservation review, so-called "anticipatory demolition").

Subsection (l) requires that with respect to any undertaking subject to section 106 of NHPA, in which the consultation process carried out pursuant to that section does not result in an agreement

between a Federal agency, the Advisory Council and the appropriate State Historic Preservation Officer, the Federal agency must follow the recommendations of the Advisory Council unless the head of the agency determines that the recommendations of the Advisory Council are not "feasible and prudent." If the agency does enter into a memorandum of agreement for such undertaking, the memorandum shall govern the undertaking and all its parts.

Subsection (m) allows an agency whose system of environmental review under the National Environmental Policy Act is found by the Advisory Council to provide sufficient attention to the protection of cultural resources to substitute such review for the requirements of section 106 of NHPA.

Section 13 amends section 111 of NHPA to require Federal agencies to establish and implement adaptive use alternatives for historic properties that are not needed for current or projected agency purposes.

Section 14 amends title I of NHPA to add a new section 112 on disposition of archeological materials. Subsection (a)(1) of the new section 112 requires that Federal agencies involved with archeological resources be responsible for ensuring that agency personnel and contractors meet professional standards developed by the Office of Personnel Management (with respect to agency personnel) or the Secretary, in consultation with the Advisory Council (with respect to contractors).

Paragraph (2) requires that Federal archeological activities provide appropriate opportunities for the involvement of the interested public.

Paragraph (3) directs that Federal archeological research be designed, to the extent feasible, to address research topics of demonstrable significance to the sciences and humanities.

Paragraph (4) provides for the maintenance and dissemination of data produced by Federal archeological research.

Subsection (b) directs the Secretary, in consultation with the Advisory Council, to promulgate guidelines to ensure that Federal, State, and tribal preservation programs include plans to promote voluntary preservation measures for archaeological resources on private lands.

Section 15 amends title I of NHPA to add a new section 113. Section 113 directs the Advisory Council to study the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities. The Advisory Council is to submit the results of its study to Congress within 18 months after the date of enactment of this section. Subsection (d) authorizes the appropriation of \$500,000 for the study.

Section 16 adds a member of an Indian tribe or Native Hawaiian organization to the Advisory Council.

Section 17 clarifies that it is the responsibility of the Advisory Council to promulgate such rules and regulations it deems necessary to govern the implementation of section 106 of NHPA in its entirety.

Section 18 amends section 301 of NHPA to modify several definitions in NHPA and to define additional terms. The changes include—

- (1) clarifying the definition of "agency";

- (2) updating the definition of "State";
- (3) substituting the more current and inclusive definition of "Indian tribe" found in section 4 of the Indian Self-Determination and Education Assistance Act;
- (4) amending the definition of "historic property" by specifying "material" remains as an included item;
- (5) rewording the definition of "undertaking," based on Advisory Council regulations, and specifically including programs carried out by States pursuant to Federal permits or funding;
- (6) expanding the definition of "preservation" to include "study, interpretation, reconstruction, education and training;"
- (7) expanding the definition of a "cultural park" to include non-urban areas;
- (8) expanding the definition of a "historic conservation district" to include non-urban areas;
- (9) expanding the representation on "Historic preservation review commissions" to include "prehistoric and historic archaeology" and "folklore and cultural anthropology;" and
- (10) adding new or revised definitions to NHPA for: "tribal lands," "Traditional cultural authority," "Certified local government," "Cultural resources," and "Council" (the Advisory Council).

Section 19 amends section 302 of NHPA to provide authority for Federal agencies to delegate (with the consent of the Advisory Council) preservation responsibilities, and the necessary funding, to the Advisory Council or to State or tribal preservation programs.

Section 20 amends section 304 of NHPA to permit the head of a Federal agency to withhold from public disclosure, information about the location, character, or ownership of a historic resource if the agency, in consultation with the Secretary, determines that disclosure may cause a significant invasion of privacy, might risk harm to the historic resource or might impede the use of a traditional religious site by practitioners.

Section 21(a) adds a new title IV to NHPA to establish a National Center for Preservation Technology (the "Center").

The new section 401 contains a Congressional finding stating that the complexity of technical problems encountered in preserving historic properties, and the lack of adequate dissemination of technical information to preserve such properties require a national initiative to coordinate and promote research, disseminate information, and provide training about preservation technologies.

The new section 402 defines certain terms used in the title.

New section 403 establishes the Center within the Department of the Interior. The Center is to be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

Section 404 establishes a Preservation Technology Board to provide leadership, policy advice, coordination, and professional oversight to the Center; advise on priorities and the allocation of funds among the activities of the Center; and submit an annual report to the President and the Congress.

Section 405 directs the Secretary, in consultation with the Preservation Technology Board, to select regional preservation technology centers to develop, coordinate, and implement preservation technology programs, consistent with the purposes of the Center.

Section 406 authorizes the Center to accept grants and donations from private individuals, groups, organizations, and other entities, and transfers of funds from other Federal agencies.

Section 407 authorizes the Center to enter into contracts and cooperative agreements, subject to appropriations, with Federal, State, local, tribal, Native Hawaiian organizations, educational institutions, and other public and private entities to carry out the Center's responsibilities.

Subsection (b) of section 21 provides that nothing in this section shall affect existing programs and activities currently undertaken by the National Park Service at Williamsport, Pennsylvania and Monocacy National Battlefield, Maryland.

Subsection (c) authorizes the appropriation of such sums as may be necessary for the establishment, operation, and maintenance of the Center and any regional preservation technology center.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 1, 1992.

HON. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 684, the National Historic Preservation Act Amendments of 1992, as ordered reported by the Senate Committee on Energy and Natural Resources on June 24, 1992. Assuming appropriation of the necessary sums, federal costs to implement sections 15 and 21 of this bill would be about \$4.5 million in fiscal year 1993, rising to about \$14 million a year by 1996. The costs of implementing other bill provisions cannot be determined in this time but could be several million dollars a year. S. 684 would not affect direct spending or receipts and thus would not involve any pay-as-you go scoring under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

S. 684 would revise existing programs carried out under the Historic Preservation Act and add several new initiatives. Newly added provisions would require the Secretary of the Interior to establish programs to assist Indian tribes and native Hawaiians in the preservation of historic and cultural resources (including direct grants) and to provide comprehensive preservation education and training to public employees, students, and other individuals. Section 15 of the bill would require the Secretary to undertake a study of alternatives for controlling illegal traffic in antiquities (\$500,000 would be authorized for this purpose). Finally, section 21 would establish a national center for preservation technology and a preservation technology board. The new center would be charged with developing and disseminating preservation and conservation technologies and training tools and would also act as a liaison and clear-

inghouse for related organizations. The preservation board would provide advice and oversight to the center.

Assuming appropriation of the necessary sums, CBO estimates that the National Park Service (NPS) would spend about \$500,000 in fiscal year 1993 to conduct the alternatives study required by section 15. In addition, about \$4 million would be required that year to establish and operate the national preservation center and board; the cost of operating the center would rise to about \$14 million annually by 1996. We cannot estimate the costs to implement other bill initiatives in the absence of specific NPS plans. Depending on the alternatives chosen by the agency and the program levels funded by the Congress, costs could range from insignificant (to revise existing programs to accommodate tribal and native Hawaiian preservation needs) to several million dollars a year (to upgrade existing state grant programs, initiate new grants for Indian tribes and native Hawaiians, and establish new education and training programs). These estimates are based on information provided by the National Park Service.

Enactment of this legislation would have no impact on the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM

(For Robert D. Reischauer, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 684. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 684, as ordered reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report received by the Committee from the Department of the Interior setting forth Executive agency recommendations relating to S. 684 is set forth below:

DEPARTMENT OF THE INTERIOR,
Washington, DC, May 8, 1992.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to provide you with the Administration's views on S. 684, the "Historic Preservation Act Amendments of 1991."

We support enactment of S. 684 only if amended as we suggest in this letter and in the Section by Section Comments attached to this letter.

S. 684 would amend the Historic Preservation Act of 1966 to accomplish a number of purposes. We support the concept of a number of provisions in S. 684, and we oppose others. The Section by Section Comments attached to this letter provides our detailed views on this complex bill. We have several overriding concerns with the bill that we will address in this letter. In addition, the Department of Justice advises that it will address its concerns about the Constitutionality of certain aspects of this bill in a separate transmission to the Congress. We stand ready to work with your Committee to work out the details on this important legislation. Our overriding concerns follow.

First, we support the concept of providing Indian tribes the opportunity to become involved with the Historic Preservation Act through a program by the Secretary of the Interior (Secretary). In addition, we do not believe "other native American Organizations" should be allowed to have all authority specified under the bill, and we recommend that they be deleted from the bill. We also object to automatic eligibility for inclusion in the National Register properties of traditional religious importance to Indian tribes and other groups; instead, these properties should be required to go through the same process as other properties to prove worthiness for inclusion. Finally, we object to the requirement that Federal agencies consult with any tribe who may attach religious or cultural values to historic properties when planning a section 106 undertaking. Instead, we recommend that consultation would be required when the National Register record shows an entity attaches religious and cultural significance to a property.

Second, we do not believe it is possible to apply the provision of the Historic Preservation Act to intangible values such as "religious and cultural values," nor is it appropriate for these values to be eligible for inclusion in the National Register of Historic Places. Therefore, we recommend the deletion of this requirement.

Third, we object to the additional requirements proposed by the bill for prior consultation with the Council on Historic Preservation on programmatic matters such as periodic review. Therefore, we recommend that this consultation requirement be deleted wherever it appears in the bill.

Fourth, rather than deleting the requirement for Federal Register notification when a property is being considered for inclusion in the National Register, we recommend that State or local entities be responsible for public notice, which would be more economical and effective.

Fifth, we do not support the authority given the Secretary and the Council by this bill to delegate responsibilities under the Historic preservation Act to the SHPO's. This would be an unwise precedent, and is most likely unconstitutional. Instead, we recommend that the Secretary and the Council be authorized to enter into contracts and cooperative agreements with the SHPO's to assist them in the performance of their functions.

Sixth, we object to several provisions in the bill which would broaden the SHPOs authorities under the Act. As we discuss in the

Section by Section Comments attached to the letter, we see no need for these changes, and we recommend their deletion.

Seventh, regarding the programs of Federal agencies, we disagree that Federal agencies should be required to consult with certain named entities in the implementation of their programs, and we object to the expansion of scope of actions with which the Federal agency must be concerned, such as including programs subject to review and approval by the agency. We also seek deletion of provisions that would require agency coordination with named groups in their preservation activities, and would limit the agency to approving an adverse undertaking only if it determines that following the Council's recommendation would not be feasible or prudent. Finally, the provision prohibiting an agency from providing financial assistance to applicants who have intentionally adversely affected a historic property should be amended to require that the property in question was determined eligible for inclusion in the National Register before the change took place, and the property owner intended to frustrate the purposes of the Historic Preservation Act.

Eighth, there are several provisions of the bill that would simply codify the council's already-existing regulations. In these cases, we recommend that the law not be changed, but the regulations be allowed to control.

Ninth, we oppose extending the provisions of this Act to activities in other countries.

Finally, we do not object to the creation of a National Center for Preservation Technology as long as the Center is placed under the auspices of the Director of the National Park Service, the Board is changed to an advisory board, the creation of regional preservation technology centers is made permissive rather than mandatory, the authority to provide grants and loans is removed from the authorities of the Center, and the new authorization of funds for the Center is deleted.

In conclusion, we appreciate the interest the committee has shown in the area of historic preservation over the years, and we look forward to working with you on this bill.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

MIKE HAYDEN,
Assistant Secretary.

SECTION-BY-SECTION COMMENTS ON S. 684

Section 1—Cites the short title of the bill as the "National Historic Preservation Act Amendments of 1991."

Section 2—Would add two new paragraphs to the "Findings" portion of the National Historic Preservation Act (Act):

- (1) historic properties, including prehistoric and historic sites, buildings, districts, structures, landscapes, and objects, prehistoric and historic roads and trails, and places that have figured in the traditions and lifeways of Native Americans, Native Hawaiians,

other ethnic groups, and the Nation as a whole, are vital links to the past and contribute to our identity; and

(2) extending Federal government concern to properties of significance to localities, Indian tribes, Native Hawaiians, States, and the Nation in private and public ownership is the manner in which a national preservation program is achieved.

Comment: These new findings would explain the current practice in the preservation community. Extending the concern of the Federal government to localities is the spirit in which the program is currently run. However, we would recommend that the first finding be amended to reference "indigenous populations," rather than the broader reference to "ethnic groups." We do not believe the intent of this finding is to include any groups other than those indigenous to the lands now encompassed by the United States. Therefore, we recommend deletion of the phrase "Native American, Native Hawaiian, and other ethnic groups" on page 2 lines 14-15, and replace it with the phrase "indigenous populations".

Section 3—Would make two changes to the "Declaration of Policy" section of the Act:

(1) would add as a policy administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiian Organizations (NHO's), and local governments; and

(2) would add Indian tribes and NHO's to the assistance provisions of the program.

Comment: Adding the partnership criteria to the declaration of policy section states the spirit in which the national program is run, and would be a reasonable practice in any event. Regarding adding Indian tribes and NHO's to the program, we have in the past supported as a matter of policy an expansion of the program to Native Americans. Therefore, this provision is not objectionable. However, for reasons that we will discuss in our comments on section 7, we do not believe that Native Hawaiian Organizations should be empowered to operate in the same way that Indian tribes would under this legislation. Therefore, we recommend the deletion of the phrase "Native Hawaiian Organizations" on page 3, line 7.

Section 4—This section would: 1) change the notification requirement whenever a property is being considered for inclusion in the National Register, for designation as a National Historic Landmark, or for nomination to the World Heritage list by deleting the notification to the general public; and 2) require the Secretary to periodically review threats to National Register properties and submit recommendations to the President and the Congress for remedial action.

Comment: The intent of the notification change is to delete the Federal Register notification, which is duplicative, expensive, and does not serve the purpose of notifying

the general public. We support the concept of this change, but believe that public notice is still a valuable tool in historic preservation. Therefore, we recommend that the bill be amended to place the onus of public notice and review at the State and local level. This notice could consist of a notice in the local newspaper, or a mailing to the affected public. In this way, public notice and review would be effective and inexpensive.

The provision requiring periodic review would not be objectionable as long as the purpose would be to review threats in general, and not an individual review of threats to each property on the National Register. For example, such a report could indicate that many National Register properties are threatened by incompatible new construction, and that technical information needs to be targeted toward enabling people to understand how new construction can be accomplished in a compatible manner. In addition, remedial action would not be necessary or appropriate in every case. Therefore, section 4 of the bill should be amended as follows:

On page 4, line 20, the term "in general" should be added between the words "review" and "of".

On page 5, line 2, the period at the end of the line should be deleted and the phrase "where appropriate." should be added at the end.

Section 5—Would amend the sections of the Act dealing with the State Historic Preservation Programs in the following ways:

(1) The periodic evaluation of State programs by the Secretary would be in consultation with the Advisory Council on Historic Preservation (the Council) and the State Historic Preservation Officer (SHPO). The Secretary must determine that a State program is consistent with the purposes and requirements of the Act. The Secretary may, at his discretion, substitute a State system of fiscal audit for the Federal requirements as long as the State system establishes and maintains substantially similar accountability standards.

Comment: As a policy matter, we see no need for additional requirements in the Act for prior consultation with the Council on programmatic matters such as this periodic review. This consultation requirement appears in several other places in the bill, and we suggest that this requirement be deleted wherever it is found. We do not object to consultation with the SHPO. In addition, we do not see a need to expand the requirements on the State programs to include the "purposes" of the Act. Therefore, we recommend the deletion of "purposes and" on page 4, line 15. Finally, we do not object to allowing the State to use its own fiscal audit system in place of the federal system, as long as they are compatible. However, we recommend that the word "requirements" on page 4, lines 19 and 20 be changed to "systems" for clarity.

(2) Regarding the SHPO's responsibilities under the Act; (a) eliminate the requirement that the SHPO cooperate with Federal and State agencies, local governments, and private organizations and individuals in the performance of its duties; (b) change its responsibilities to identify and nominate eligible properties to the National Register and otherwise administer such applications to simply nominate; (c) broaden the scope of the SHPO to provide public information, education and training, and technical assistance from issues relating to Federal and State Historic Preservation Programs to anything relating to historic preservation; (d) require that the SHPO consult with appropriate Federal agencies on Federal undertakings that may affect historic properties and the content and sufficiency of any plans developed to protect or to reduce or mitigate harm to such properties; (e) advise, assist, and evaluate proposals for rehabilitation projects that may qualify for Federal assistance; and (f) carry out such additional responsibilities as the SHPO deems appropriate consistent with the Act.

Comment: Regarding (a) and (b) above, we see no need for these changes. of The present law has served the historic preservation effort well, and we recommend that these changes be deleted. Regarding (c), the SHPO already performs these functions under current law. Therefore, we do not oppose specific authority for these activities. The consultation process outlined in (d) would get the SHPO into the section 106 consultation process, and may imply a necessity for mitigation plans. The consultation process outlined here is already provided under the Council's regulations, and we see no need to put the process into law. To do this would remove any discretion to change the regulations if it is determined that a change is necessary. Therefore, we recommend its deletion. Regarding (e) above, the SHPO's have always provided this service; therefore, its inclusion into the Act would not change current practices, and we do not object to its inclusion. Regarding (f), this provision would expand the power of the SHPO's to determine what is an appropriate activity for Federal funds. We believe the present arrangement, where the responsibilities of the SHPO's are determined by the Secretary in consultation with the SHPO's, has worked well and we see no reason to change it now. Therefore, we oppose this provision.

Finally, section 5 would authorize the Secretary or the Council to delegate to a SHPO through contracts or cooperative agreements all or any part of their authorities within the State to:

- (1) identify and preserve historic properties;
- (2) determine the eligibility of properties for National Register listing;
- (3) expand the National Register;
- (4) maintain historical and archaeological data bases;

(5) certify eligibility for Federal preservation incentives;

(6) comment on, approve, and enforce actions of Federal, State, or local governments, private individuals, and corporations under the Act, the Internal Revenue Code, and other Federal laws; and

(7) exercise other authorities as the Secretary and the Council may wish to delegate.

This delegation could only be made if the SHPO requests it, the Secretary has approved the State historic preservation program, the SHPO agrees to carry out these authorities in a timely and efficient manner acceptable to the Secretary or the Council, and there is agreement to the terms of additional financial assistance to the State if such assistance is needed to carry out the delegated authority.

Comment: The evident intent of these provisions is to give to each SHPO its own specific authority to add to the National Register properties that are limited to State and local significance and to subject delegations under these provisions to whatever specific regulations that the Secretary and the Council may promulgate.

Many States have superior historic preservation programs, and it would be wise policy to recognize those programs by allowing them to run their programs with less oversight. In addition, it would seem wise to allow the Secretary and the Council to enter into cooperative agreements to allow the SHPO's to assist the Secretary and the Council in implementing the Act. Such assistance could be used to reduce the burdens of the program on the Federal government. For example, delegating the responsibility of maintaining historical and archaeological data bases could reduce greatly the paperwork burden at the Federal level, while still maintaining these data for future generations. However, we object to the idea that the Secretary and the Council would be "delegating" Federal functions to the SHPO's, which would probably be unconstitutional, and in any event, it would not be wise to abdicate such important functions to the State level. The Department of Justice will address this issue in a separate submission to the Congress. Therefore, we recommend that the phrase "the Secretary or the council may delegate to a State Historic Preservation Officer, through contracts and cooperative agreements, all or any of their authorities within the State—" on page 7, lines 1-5, be deleted and replaced with the phrase "the Secretary or the Council may enter into contracts and cooperative agreements with a State Historic Preservation Officer to allow such Officer to assist in the performance of their duties within the State in the following areas:".

Section 6—would add two definitions to the Act:

(1) "designation" would be defined as the identification and registration of properties for protection that meet criteria established by the State or the locality

for significant historic and prehistoric resources within the jurisdiction of a local government; and

(2) "protection" would be defined as a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties certified by the local governments under authorities delegated to them by the SHPO's under the Act.

Comment: These definitions would define terms dealing with properties certified by the local governments under authorities delegated by the SHPO's under current law. The definitions would not have a large impact on the Federal program, and they define the way the local governments currently operate. Therefore, we have no problem with these definitions.

Section 7 would require the Secretary to establish a program and develop regulations to assist Indian tribes and Native Hawaiian Organizations (NHO's) in preserving their unique cultural heritage. The program would include preservation, retention, and enhancement of both the historic properties and cultural traditions of Indian tribes and NHOs. After proper consultation, the Secretary would be required to initiate this program by October 1, 1992. The Secretary would be required to foster communication and cooperation between Indian tribes, NHOs and SHPOs. The program would be developed in such a way as to ensure that Tribal and Native Hawaiian values are taken into account, and the Secretary would be authorized to waive or modify requirements of section 101 of the Act to conform to the cultural setting of tribal or Native Hawaiian heritage preservation goals and objectives.

A tribe or NHO could assume all or any part of the functions and responsibilities of a SHPO with respect to tribal land if:

The tribe's chief governing authority so requests:

The tribe or organization designates a tribal preservation officer to administer the program; and

The tribal preservation officer submits to the Secretary a preservation plan, and the Secretary approves the plan.

The Secretary, after appropriate consultation, must establish and implement procedures for including within the apportionment for survey and planning grants those tribal programs that assume the responsibilities of a SHPO. At the request of a tribe or NHO who has an approved preservation program, the Secretary shall delegate responsibilities for all or any part of the authorities described in section 5 of this bill if certain conditions are met.

The Council may enter into agreements with Indian tribes and NHO's to permit undertakings on tribal lands in place of Council review under regulations if after Council consultation with appropriate SHPO's it determines this would provide historic properties protection equivalent to protection afford by Council regulations.

At the request of an Indian tribe or a NHO who has an approved preservation program, and with the concurrence of the Council after consultation with the affected SHPOs, the Bureau of Indian Affairs (the BIA) and the Indian Health Service (IHS) shall, and other Federal agencies may, delegate such portions of the agencies' preservation plans as requested by the tribe either to the preservation official or the affected SHPO, at the tribe's discretion.

All properties of traditional religious and cultural importance to an Indian tribe, NHO, or other Native American organization, are eligible for inclusion in the National Register. When planning a section 106 undertaking, Federal agencies must consult with Indian tribes or NHO's that might attach religious and cultural values to these properties.

Comment: As a policy matter, we support clarifying the role of Indian tribes within the national historic preservation program. Allowing these entities to participate in the program would be in keeping with the Administration's policy of increased self-determination for Native American groups. However, we have a number of concerns with this section that must be addressed.

First, we do not support the concept of allowing NHOs to participate in the program as an Indian tribe would, for the following reasons. First, Indian tribes have a special government-to-government relationship with the federal government as does a State, whereas an NHO would not. Second, many Indian tribes have reservations, whereas NHOs would not. Therefore, we would recommend that Native Hawaiian Organizations be removed from contemplation under this bill, and instead the bill should specify that a State-sanctioned Native Hawaiian Historic Preservation Officer be appointed by the Governor of Hawaii to run a program for Native Hawaiians. The bill should be amended wherever necessary to reflect this recommendation.

Second, the definition of "Indian tribe" in the Act currently includes Alaska Native Corporations. This is appropriate at the present time because Indian tribes do not currently have the authority to establish their own programs. However, under this bill, Indian tribes would have such authority, and this would give each Alaska Native Corporation the authority to establish its own programs. We do not support this result for several reasons. Alaska Native Corporations are not governmental bodies like Indian tribes; rather, they are for-profit corporations. Therefore, there could be no government-to-government relationship between them and the United States. In addition, there are hundreds of Alaska Native Corporations, and the administration of so many programs would be virtually impossible. Finally, section 1318 of the Alaska National Interest Lands Conservation Act (ANILCA, Public Law 96-487) has already established a Federal cultural assistance program for Native Corporations and Groups that

apply. It is therefore inappropriate to allow these Corporations to establish programs above the assistance already available under ANILCA. For these reasons, we recommend that for this section only, Alaska Native Corporations be removed from the definition of Indian tribe. This would allow Alaska Native Corporations to participate in other facets of the Act, but not allow them to establish their own programs. A new subsection (c) should be added to this section that would read as follows:

"(c) DEFINITION.—For the purposes of this section, the term 'Indian tribe' or 'tribe' means any Indian tribe, band, nation or other organized group or community which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; *Provided*, that such definition does not include Alaska native villages or regional or village corporations."

Third, we do not believe it is possible to apply the provisions of the Act to intangible values such as "religious and cultural values." However, such values can be used to determine if a particular site is significant. Therefore, we recommend that the bill be modified to clarify that intangible values are not eligible for listing in the National Register.

Fourth, the provisions that would specifically require the Secretary to foster communication and cooperation between Native American groups and SHPO's should be deleted. This cooperation will be a necessary result of the process, and will not need the "mediation" of the Secretary. Therefore, we recommend the deletion of the text from page 9, line 19 through page 10, line 10.

Fifth, the provisions requiring that Native American values be taken into account would require us to apply the provisions of the Act to intangibles, and for the reasons discussed above, we object to this provision. Therefore, we recommend the deletion of the text from page 10, line 11 through line 16 up to the end of the sentence.

Sixth, it will take longer than 6 months to initiate a Tribal historic preservation program. Therefore, we recommend the date for initiation on page 11, line 2, be changed from "October 1, 1992" to "October 1, 1994."

Seventh, there are several places where the phrase "other Native American Organizations" would be included in the consultation and designation process. We have a government-to-government relationship with Indian tribes, but not to other Native American organizations, which would include Indian lobbying groups. In addition, only Indian tribes are considered governments as are State and local governments, and only Indian tribes should be allowed to be involved in the consultation and designation process like the State and local governments are. Therefore, the phrase "other Native American organizations" should be deleted from page 12, lines 16-17 and page 15, line 3.

Eighth, we believe that the object of the Historic Preservation Act is not always preservation of every site, but consideration of any historic site when an action may threaten it. Therefore, we recommend the phrase "protection at a level and of a kind" on page 14, line 10 be changed to "consideration."

Ninth, the provision that would create automatic eligibility for inclusion for properties of traditional religious and cultural importance to an Indian tribe, NHO or Native American Organization would cause many properties that are not nationally significant to be automatically eligible for inclusion in the Register. We oppose this provision, and recommend that subparagraph 7(A) on page 15, lines 1-4 be deleted, and replaced with the following subparagraph:

"7(A) Properties of traditional religious and cultural importance to an Indian tribe, Native Hawaiian Historic Preservation Officer, or Native Alaskan Historic Preservation Officer may be determined to be eligible for inclusion on the National Register."

Tenth, it would be extremely burdensome for a Federal agency that was planning a section 106 undertaking to consult with any tribe who may attach religious or cultural values to historic properties. First, any property in the United States may have religious significance to someone. Secondly, as discussed above, cultural values is an intangible value and not eligible for listing, but a property could have religious and cultural significance attached to it. Therefore, page 15, lines 5-9 should be amended to read of follows:

"A Federal agency shall consult with an Indian tribe or Native Hawaiian Historic Preservation Officer when the National Register record shows such entity attaches religious and cultural significance to historic properties in compliance with section 106 of the Act."

Section 8—would authorize the Secretary to make direct grants to Indian tribes and NHO's, and to waive matching requirements for grants to Indian tribes, NHO's and Micronesian States. The Secretary could waive or modify the requirements of the grant provisions of the Act to conform to the cultural setting of these nations to achieve the goal of establishing a historic and cultural preservation program in each Micronesian state.

In addition, the Secretary would be able to use grants for any purposes that the Secretary may determine. The Secretary must consult with the Council regarding these grants.

Comments: We already support the matching grant program to Indian Tribes and Freely Associated States, and we find this section unnecessary.

We do not agree that the Secretary should be able to use the grants program for any purposes that the Secretary may determine. Therefore, we recommend deletion of the phrase on page 15, lines 24-25 "and for such purposes as

the Secretary may determine", and a period should be placed after the word "Act" on line 24. In addition, we do not support requiring the Secretary to consult with the Council regarding these grants. Therefore, page 16, lines 1-3 should be deleted.

Section 9—would require the Secretary, in consultation and cooperation with a number of public and private groups including Federal, tribal, Native Hawaiian and non-Federal organizations, to develop and implement a comprehensive preservation education and training program. The program would include new standards and increased preservation training opportunities, special assistance to historically black colleges and universities and colleges with a high enrollment of Native Americans and Native Hawaiians, dissemination of information on preservation technologies, and support for research, analysis, curation, interpretation, and display related to preservation. There would be authorized \$5 million for each of fiscal years 1992-96.

Comment: We believe that the Act currently provides us the authority to carry out the activities specified in this section, and we therefore oppose this section. We have three concerns: First, the Secretary should be authorized, but not required, to develop such a program. Therefore, we recommend the word "shall" on page 17, line 20, be changed to "may". Second, the requirement to cooperate, above and beyond consulting, with a whole list of participants would make the establishment of this program cumbersome and unworkable. Therefore, we recommend the deletion of the phrase "and cooperation" from page 17, lines 20-21. Third, since authority already exists to conduct the activities contemplated by this section, we recommend against the specific appropriations authority, and we therefore recommend deletion of lines 1-3 on page 20. Finally, we recommend that on page 18, lines 9-10, the list of other organizations to be consulted should be deleted and replaced with the phrase "other appropriate organizations."

Section 10—attempts to rectify a confusing and administratively cumbersome authorization in the matching grants program. Currently, certain grants are made at a 50 percent matching share and others at a 70 percent federal share. In its place would be an authority to make grants at a uniform 60 percent Federal share and to negotiate with States the grant percentage for responsibilities delegated by the Secretary or the Council.

In addition, the Secretary would be required to make funding available as soon as possible after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each would be considered to be one grant and would be administered as such.

Comment: The entire history of the historic preservation program has been that the *de facto* Federal share has

always been only a fraction of the authorized amount, and we can foresee no circumstance where it should approach 100 percent. We favor simplification of the granting authority at a uniform Federal level, and we believe that a 50-50 match would be equitable in these times of fiscal restraints. Therefore, we would recommend that section 10 be amended to provide for a 50-50 matching requirement for all grants under this program.

In addition, there is no reason to require the Secretary to make funding available as soon as possible. We already make funds available as soon as possible; therefore, we recommend the deletion of the phrase starting on page 20, line 24 after "(e)", through page 21, line 2 ending with "agreement". The provision requiring that grants to each individual unit be considered one grant is consistent with recent steps we have taken to reduce paperwork in grant administration and we support its enactment.

Section 11—would amend the grant apportionment provisions in 2 ways:

(1) regarding survey and planning grants, by deleting the phrase "for comprehensive statewide historic surveys and plans under this Act", and inserting "for the purposes of this Act"; and

(2) regarding project and program grants, by deleting the phrase "The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans."

Comment: The changes contemplated by this section would reconcile the apportionment authority with the broadbased partnership that has developed in response to the 1980 amendments and with the expanded partnerships envisioned by this bill. Therefore, we support this section.

Section 12—would amend the Act regarding the preservation programs of Federal agencies in the following ways.

(1) The Council would be included with the Secretary in the consultation process for establishing and implementing the preservation programs of Federal agencies (underlined phrase is new). Also, tribal preservation programs and certified local governments would be added to the SHPO's as entities with which the federal agencies must cooperate.

(2) The scope of actions with which the federal agency must be concerned would be expanded to include historic properties that are not under control of the agency, but subject to possible effect by actions "assisted, licensed, permitted, or participated in by the agency or by programs subject to review and approval by the agency." Such properties must be managed in a way that reasonably preserves their historic, archeological, architectural, cultural, and other values, and must be given full consideration in planning.

(3) The agencies' preservation-related activities must be carried out in cooperation and coordination with Federal, State, tribal, NHO's and local historic preservation plans.

(4) The agencies' procedures must be consistent with the Council's regulations, must evaluate historic properties guarding the means by which adverse effects on such properties would be resolved, and must provide for the disposition of Native American cultural items consistent with the Native American Grave Protection Act.

(5) Agencies would be prohibited from providing assistance such as loans, loan guarantees, permits, and licenses to applicants who have intentionally adversely affected a historic property to which the assistance would relate.

(6) Where an agency has not entered into an agreement with the Council, the agency would be authorized to approve an adverse undertaking only if it determines that following the Council's recommendations would not be feasible and prudent.

(7) When the Council finds after appropriate consultation that a Federal agency's procedures for compliance with the National Environmental Policy Act of 1969 would adequately provide for consideration of historic resources, the agency may comply with those procedures in place of the Council's regulations.

Comment: This section would make some major changes to the way Federal agencies operate their historic preservation programs. Some changes incorporate the current practice under the Act, and others update these provisions in light of changes made in the Act by this bill, such as the inclusion of Indian tribes and NHOs. We have the following comments on this section.

(1) Regarding (1) above, we disagree that agencies should be required to consult with the named entities in the implementation of their program. Therefore, we recommend the deletion of the phrase "and implement" from page 22, line 7.

(2) Regarding (2) above, we object to this expansion of scope. It would be difficult, if not impossible, for agencies to determine the effect of all activities which they review, approve, license, and so on. In addition, the changes in this section would affect an ongoing lawsuit in which the activities of an agency within this Department is involved. Finally, the phrase "in a way that reasonably preserves" assumes that preservation is the proper course in all situations, and is too strict a standard to follow in all cases. Instead, the stewardship role that all land management agencies have in the protection of their resources should be applied. Therefore, we recommend deletion of the phrase "actions assisted, licensed, permitted, or participated in by the agency or by programs subject to review and approval by such agency" on page 22 lines 13 through 15 and on page 23 lines 6-8. In addition, the phrase "way that reasonably preserves" on page 22 lines 21-22 should be de-

leted, and replaced by the phrase "spirit of stewardship for".

(3) Regarding (3) above, the requirement for Federal agencies to coordinate with the named groups in their preservation activities could cause confusion and an overreaching bureaucratic nightmare. Cooperation with these groups would be an acceptable standard. Therefore, we recommend deletion of the phrase "and in coordination with Federal, State, tribal, Native Hawaiian, and local historic preservation plans" from page 23, lines 14-15; and the phrase "historic preservation planning activities of" should be added between the words "with" and "other" on page 23, line 11.

(4) We believe the activities discussed in (4) above are already done by regulation. In addition, the disposition of Native American cultural items is handled by both statute and regulation. Therefore, paragraph (E) on page 23 line 17 through page 24 line 9 should be deleted.

(5) Regarding (5) above, this provision as written could have the unintended effect of penalizing property owners who make good faith changes to their property that they do not know are not in conformance with the Historic Preservation Act, and then sometime in the distant future they are denied assistance for a valid purpose. In order to ensure that this does not occur, we suggest two changes to this provision:

(a) The property in question must have been determined eligible before the change took place; and

(b) It must be shown that the owner intended to frustrate the purposes of the Act.

Without these elements in the law, it would be unjust to deny a landowner the assistance that would otherwise be due.

(6) Regarding (6) above, the practical effect of this provision would be to shift the responsibility for making this determination from the agency to the Council. This standard is too strict, and would provide for no reasonable alternative in many cases except to enter into an agreement with the Council, which in itself may not be feasible. In addition, this approach would go beyond current practice. Therefore, we recommend that the provision be amended to require the agency to make a final decision regarding the affected property and inform the Council in writing as to its action. The word "if" on page 25 line 3 be replaced with the word "after"; and the phrase "has determined that implementing the recommendations contained in the comments of the Council pursuant to section 106 is not feasible and prudent." on page 25, lines 5-6, and replacing it with the phrase "has made the final decision on the treatment of the property, and has explained to the Council its consideration of the Council's comments."

(7) Regarding (7) above, we support the concept involved. It would eliminate duplication in regulations, and stream-

line the process. However, we have several changes to this provision.

(a) As discussed above, we object to intangibles being placed in the National Register. Therefore, the phrase "cultural resources" on page 25, lines 13-14 should be replaced with "historic properties";

(b) Paragraph (1) on page 25, lines 15-16 should be deleted; and

(c) Everything after the number "106" on page 25, line 23 through page 26, line 2 should be deleted, and a "." should be placed after "106".

Section 13—Would require Federal agencies to establish and implement adaptive use alternatives for historic properties that are not needed for current or projected agency purposes, and may lease such properties if such action would adequately insure the preservation of such properties.

Comment: The intent of this section is to place an affirmative duty upon Federal agencies to implement current authority. We generally object to changing discretionary authority into a requirement, and therefore, we oppose this section.

Using existing authority, the National Park Service has leased historic properties that are excess to agency needs to rehabilitate 45 historic buildings through the willing investment of more than \$5 million by private parties, to maintain in historic uses over 1,000 acres of farmland without hiring Federal employees to farm it, and has returned \$500,000 in revenue for use in preservation of other historic properties. We stand ready to share experience, approaches, and guidelines with other Federal agencies.

Section 14—would add a new section to title I of the Act that would deal with the disposition of archaeological remains. Each Federal agency that is responsible for the protection of archaeological resources or conducts, causes to be conducted, or permits archaeological surveys or excavations under this Act would be required to ensure that:

Agency and personnel contractors supervising surveys and excavations follow professional standards under regulations of the Secretary created after consultation with the Council, and would utilize where appropriate standards and certification standards of named private and public organizations;

Protection programs would be designed to include the interested public where appropriate, which would include Native American organizations;

Surveys and excavations would be designed to address research topics of demonstrable significance; and

Data produced by these activities would be maintained in perpetuity and disseminated to potential users.

This section would also add new and detailed requirements regarding the ownership, control, and disposition of Native American cultural items under the Native Ameri-

can Grave Protection and Repatriation Act. Archeological survey and recovery work conducted under an agreement executed under section 106 of the Act would not need a separate permit under the Archeological Resources Protection Act of 1979 if the work meets the requirements of that act.

The Secretary, in consultation with the Council, would promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to:

- Identify archeological resources on private lands that have likely research significance;

- Educate owners about and encourage owners to preserve the archeological resources on their property, and inform them about tax and grant assistance available for the donation of the resource or of a preservation easement to the resources;

- Encourage the protection of Native American cultural items and of properties of religious or cultural importance to Native Americans; and

- Encourage owners who are undertaking excavations to follow certain guidelines to protect the resources.

Comment: The provision which would direct Federal agencies to follow professional standards and procedures in handling archeological materials could be accomplished under present authority. However, we believe that the idea is a sound one, and we could support a requirement that would accomplish two things; (1) implement a widely-accepted professional standard, and (2) allow the Office of Personnel Management, which currently has responsibility for such standards, and not the Secretary, to control the implementation. Therefore, we recommend that new section 112(a)(1), page 26 line 25 through page 27 line 7 be deleted and replaced with the following: "The Office of Personnel Management shall establish qualification standards for Federal employees in archeologist positions in consultation with the Secretary of the Interior and taking into account standards for archeologists under the Archeological Resources Protection Act of 1979 (16 U.S.C. 470(a) et seq.).".

Regarding the requirement involving and informing the interested public where appropriate, we do not object to this provision, but for the reasons stated earlier, the phrase "Native American" should be deleted from page 27, line 14. We also do not object to the requirement of data maintenance, but believe the provision should be amended to be more specific than the term "data", and to implement a workable standard. Therefore, we would recommend that new section 112(a)(4) be amended to read as follows: "collections, records, and other data produced by archeological surveys and excavations are maintained and made available to potential users pursuant to such regulations as the Secretary may promulgate."

Even though we agree with the intentions of the provisions giving specific rules for ownership, control, and disposition of Native American cultural items, we believe the Secretary's current authority is adequate to perform the functions required under these provisions. The level of detail found in these provisions is not necessary in statute, and would be more appropriate if promulgated in regulations. It should be noted that the authority for such regulations can be found in section 101(a)(7) of the Act, and in the Native American Grave Protection and Repatriation Act.

While we support its intent, we disagree with the provision to waive the requirement for permits under the Archaeological Resources Protection Act (ARPA) where agreement has been reached under section 106 and the archaeological work would meet the requirements of section 4(a) of ARPA. The purposes of these two statutes is different. ARPA is a criminal statute, designed to control illegal depredation on public lands. Permits issued under section 4(a) of ARPA authorize qualified individuals to excavate or remove resources in the public interest. Permits alone distinguish between legal and illegal acts. We recommend no change in this procedure.

Section 15—would require the Council, in consultation and cooperation with the Secretary, to study the suitability and feasibility of establishing a program for the registration of artifacts removed from archeological sites in the United States and artifacts brought in from abroad, and submit the study to the Congress within 18 months from the date of enactment. The Council would be required to consult with interested entities, including Native American organizations. \$500,000 would be authorized to perform the study.

Section 15 would also require the Council, in consultation with the Cultural Property Advisory Committee, to call for and organize United States leadership and participation in an international conference on the international antiquities trade. The conference would be held in 1992, and such sums would be authorized as necessary to the Council and other Federal agencies to fund the conference. Donated funds could also be used to defray the costs of the conference. The invites would include Native American organizations.

Comments: Archeological looting on public lands is a major problem, and one which the Department of the Interior has addressed through increased funding for law enforcement and through coordination with other land management agencies. It is known that this criminal activity is to some degree driven by an international black market in looted items. Nonetheless, we believe the scale of a nationwide artifact registration system would be so extensive as to make this proposed study fruitless, and we recommend that it not be done. We also recommend that the Council

be authorized, not required, to convene an international conference.

Section 16—would specify that at least one member of the Advisory Council on Historic Preservation be a member of an Indian tribe or an NHO.

Comment: We support the spirit of this change, but recommend that the bill be amended to ensure that the member represents a tribe. Therefore, we recommend that the paragraph on page 34, lines 11-12 be changed to read as follows: "one member of an Indian tribe who represents the interests of the tribe of which he or she is a member."

Section 17—would add the phrase "in its entirety" to the end of section 211.

Comment: This section would restate the authority of the Council, but the intent and the effect of this change is not clear. We see no need for this provision and recommend its deletion.

Section 18—this section would modify several definitions in the Act and add new ones. We will address each definition in order.

(1) The definition of "Agency" would be changed to eliminate the exception that allows for Federal programs that are exempted from the Act under section 214 from being considered an agency action for the purposes of the Act.

Comment: This change would seem to require an Agency who has a program that is exempted from the Act to come under the provisions of the Act. We are not clear as to the intent of this provision, but we do not support it if the intent is to limit our ability to exempt agencies from the workings of the Act.

(2) The definition of "State" would be changed to refer to the current status of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Comment: This change would reflect the current status of these entities. Therefore, we support this definition.

(3) The definition of "Indian tribe" would be changed to reflect a more modern definition of tribe.

Comment: We do not oppose a change in the definition of Indian tribe, but we would believe the definition found in section 4 of the Indian Self-Determination and Education Assistance Act (P.L. 93-638) would be preferable to make the definition the same as in other laws. A myriad of definitions in the U.S. Code for the same thing could only cause confusion. We recommend the new definition read as follows:

" 'Indian tribe' or 'tribe' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

(4) The definition of "historic property" or "historic resource" would be changed to add "landscape" to the definition.

Comment: Even though we currently view landscapes as eligible for inclusion in the National register, we object to its inclusion in this definition. A man-made landscape is already eligible under this definition, and its addition would create confusion as to what constitutes a landscape for the purposes of this Act.

(5) The definition of "undertaking" would be changed to add more specificity to the definition than is currently there.

Comment: Even though the current definition of "undertaking" is not specific, over the years it has been defined by regulations, and by a number of court cases. Therefore, a great body of law has developed to give the definition specificity and certainty. Any legislative change would only throw the definition into disarray, and would require years for "redefinition" to take place.

(6) The definition of "Preservation" and "historic preservation" would be changed to add "study, interpretation, and education and training activities."

Comment: Inclusion of these activities is consistent with the authorities to conduct these activities elsewhere in the law. Therefore, we support this change.

(7) The definitions of "cultural park" and "historic conservation district" would be changed to delete the requirement that these be in "urban areas."

Comment: We do not believe that the concept of cultural parks and preservation areas should be limited to urban areas. There are many rural areas which would fit these definitions if the urban requirement were removed. Therefore, we support this change.

(8) The definition of "historic preservation review commission" would be changed to expand the disciplines from which professionals could be selected for membership to these boards by adding "prehistoric and historic archeology, folklore and cultural anthropology" to these disciplines.

Comment: The purpose of this change is to expand the disciplines from which States may choose to make up their historic preservation review commissions. We support this change. The States should be given leeway to select professionals from disciplines that would suit their unique needs. In addition, the broadening of fields would recognize that indeed other fields that were not considered viable when the Act was enacted have gained recognition in the historic preservation world.

(9) A definition for "Indian land manager" would be added to the Act.

Comment: This term is archaic, and no longer serves a function in the Indian community. Therefore, it should be deleted.

(10) A definition for "tribal land" is added which would include all lands within the exterior boundaries of any Indian reservation, all dependent Indian communities, and lands administered for the benefit of Native Hawaiians under several statutes.

Comment: This definition should be deleted. It is inconsistent with definitions of Indian land found elsewhere in both laws and regulations. In these definitions, lands being held "in trust" is the deciding factor. Much land within the exterior boundaries of Indian reservations does not belong to Indian tribes or individuals and is not held in trust. It is private land owned by non-Indians. This situation has created numerous, unresolved jurisdictional problems with regard to these landowners, ranging from criminal to civil to taxation matters. Use of this definition could throw historic preservation matters into the same legal morass.

Secondly, the term "reservation" can be used in more than one sense. Use of this term with more than one definition would create even more confusion into the historic preservation matters.

Finally, we are unsure of the effect including Native Hawaiian lands into a definition of "tribal lands." It could create a great deal of confusion, raise expectations, and be used as a precedent for future action of this kind in other matters. Therefore, we oppose this definition, and recommend that it be deleted.

(11) "Traditional cultural authority" is defined as an individual in a Native American group, NHO, or other social or ethnic group who is recognized as an expert by that group.

Comment: This definition should be deleted. Not only is it too broad to be workable, but it is mentioned only once in the bill, and this is in a place that we recommend be deleted. Therefore, this definition is moot within our overall recommendations.

(12) "Certified Local government" is defined as a local government whose historic preservation plan has been certified under section 101(c).

Comment: This defines a term already included in the provisions of the Act. Therefore, we support this definition.

(13) "Cultural resources" is defined as tangible and intangible elements of traditional culture, including historic resources, American folklife, and Native American cultural values protected by the American Indian Religious Freedom Act.

Comment: This definition should be deleted. The definition itself contains terms that are themselves vague and in need of definition. In addition, as discussed above, intangible things such as cultural resources values should not by themselves be eligible for inclusion in the National Register. Finally, the American Indian Religious Freedom Act does not protect values as is stated in the definition, but rather it protects the right to believe, express, and exer-

cise, which denotes actions, not the abstract belief or values system that underlies them. This could raise fundamental Constitutional problems regarding an establishment of religion. If the government seeks to protect a specific belief system, even in the name of cultural preservation, it in effect might be endorsing that belief system in violation of the Constitution.

(14) "Council" is defined as the Advisory Council on Historic Preservation.

Comment: We support this definition.

(15) "Native Hawaiian" is defined as a person descended of the aboriginal people who occupied and exercised sovereignty in Hawaii prior to 1778.

Comment: Because of our position stated earlier, we propose deletion of this definition.

(16) "Native Hawaiian Organization" is defined as an organization which serves and represents the interests of Native Hawaiians, has a primary and stated purpose of providing services to Native Hawaiians, or has expertise in Hawaiian affairs, and would include several State-recognized organizations.

Comment: Because of our position stated earlier, we propose elimination of the term "Native Hawaiian Organization" from the bill. Therefore, this definition should be deleted.

Section 19—would add to the authority for Federal agencies to expend funds for purposes of this Act authorization to enter into agreements with non-Federal entities to delegate its functions within the jurisdiction of the local entities, and make funds available to perform these Federal functions.

Comment: The authority added by this section would in our view provide administrative flexibility, which would foster efficiency. As long as the Federal agencies remain accountable for their statutory obligations, and as long as the agreements are worded to maintain the chain of accountability for any function transferred, we believe this change would result in elimination of certain steps that are duplicative in States that conduct strong, highly professional programs. However, we strongly recommend one change. Because a Federal agency cannot delegate its functions to non-Federal entities, the legislation should make it clear that these entities can only assist the agency in the performance of its functions, and not delegate them altogether. To implement this recommendation, we suggest that the word "perform" on page 39, line 15 be changed to "assist in the performance of".

Section 20—Would extend the Secretary's present authority to withhold limited classes of information to protect historic properties to include privacy and traditional religious practices as well.

Comment: We believe this change is important to private property owners and to Native American tribes, and we strongly support its intent. However, we recommend

that this provision be amended to allow the head of the Federal agency involved in consultation with the Secretary, and not the Secretary, to withhold information under this section. Therefore, we suggest that the word "Secretary" on page 40 line 8 be deleted and replaced with the phrase "head of a Federal agency".

Section 21—would expand the directions to Federal agencies conducting work on foreign soil beyond concern for properties on the World Heritage List and include properties eligible for that country's National Register equivalent. Each Federal agency having direct or indirect jurisdiction over activities in foreign countries would be required to establish procedures, in consultation with the Council, the Department of Defense, and the Department of State, to ensure that this concern is appropriately addressed.

Comment: Federal agencies clearly have the authority to accomplish the purposes of this section already, and would surely do so at the request of the host country. Therefore, we oppose this section.

Section 22—would establish in the National Park Service a National Center for Preservation Technology (Center). The Center would develop and transfer preservation and conservation technologies, coordinate preservation technology transfer among Federal agencies, State and local governments, universities, international organizations and the private sector, and conduct other activities necessary to fulfill the purposes of the title. The Center would be headed by an Executive Director appointed by the Secretary, and the Center would select regional preservation technology centers from among applicants with a demonstrated commitment to continuing preservation. The Center would be authorized to accept grants and donations from private sources, and transfers of funds from other Federal agencies. The Center could enter into contracts and cooperative agreements with Federal and non-Federal entities to carry out the Center's responsibilities and to provide grants and loans to the regional centers. There would be authorized for the Center \$500,000 in fiscal year 1992, and \$5 million in each of fiscal years 1993-95, to remain available until expended.

Section 22 would also establish a Preservation Technology Board (Board), which would provide leadership, policy advice, coordination and professional oversight to the Center, advise the Center on priorities and the allocation of funds among the activities of the Center, and submit an annual report to the President and the Congress. The membership of the Board would include the Director of the National Park Service or designee, representatives appointed by the heads of various Federal agencies, and 10 persons appointed by the President whose professional qualifications or experience include the disciplines included in the scope of the work of the Center.

Comment: We agree that there is a need for an increased capability to generate and to disseminate technical information on historic preservation projects. Such capability needs to be tied to and coordinated with the users of the technical information. Therefore, we support the concept of added expertise in preservation technology, but would oppose this section unless amended as we suggest. Several general comments are in order. First, in order to be effective, and to avoid wasteful and unnecessary duplication, it is imperative that any Center dedicated to such a capability be part of the National Park Service (Service), and be under the day-to-day management of the Director of the Service. The Service now conducts preservation assistance programs and does work closely related to purposes of the proposed Center under the existing provisions of the Act. Second, the Board should be an advisory board only, and should be pared down in size. This would avoid duplication of effort between any Center and the Board. Third, any Center should be authorized, but not required, to establish regional preservation technology centers. This would give any Center maximum flexibility to determine when such regional centers should be established, and how many would be necessary. Finally, since any Center would be within the Service, there is no need for a separate authorization of funds for operation of the Center; instead, funds for such a Center should come from the Service's existing authorization. Our specific amendments follow.

(1) The findings and declarations of Congress should be changed to reflect the complexity of problems encountered in preservation, rather than the lack of * * * case. Therefore, section 404, page 42 lines 6-10 should be amended to read as follows: "The Congress finds and declares that the complexity of technical problems encountered in preserving historic properties in National Parks, on other public lands, and in the private sector, demonstrates a need for a heightened national initiative to coordinate and promote research, disseminate information, and provide training about preservation technologies."

(2) Regarding the duties of the Center (section 405(b)):

(a) Everything after the word "resources" on page 42, line 25 through page 43, line 2 should be deleted as unnecessary;

(b) A new duty should be added after paragraph (1) to read as follows: "take steps to extract preservation technology benefits from ongoing research by other agencies and institutions," and renumber the following paragraphs accordingly;

(c) The phrase "and promote" should be added after the word "coordinate" on page 43, line 3, to reflect the change in the Congressional finding above.

(3) Section 403(c) should be amended to remove references of coordination with the National Park Service to reflect the Center's being within the National Park Service, and to make other minor changes. The new paragraph

should read as follows: "The work of the Center shall be conducted through research, professional training, technical assistance, and programs for public awareness and through regional centers, laboratories, and service facilities designated or established under section 407."

(4) The phrase "appointed by the Secretary in consultation with the Board" should be deleted from section 405(d), page 43, lines 16-17 to reflect the Center being under the auspices of the Service.

(5) Section 405(e) and (f), page 43 line 20 through page 44 line 2 should be deleted to reflect that the Center would be within the Service.

(6) Section 406 should be amended to reflect changing the Board to an advisory board. Specifically, the specific number of appointees and the terms of office should be worked out in the charter of the Advisory Board. We suggest the following amendments:

(a) add the word "Advisory" before the word "Board" on page 44, line 5;

(b) add the phrase "advice for" after the word "provide on page 44, line 6, remove the word "advice" after "policy" on the same line, and add a comma after the word "coordination" on line 7;

(c) replace the word "submit" on line 10 with the phrase "advice on";

(d) delete subsection (c)(1), which would make the Director part of the Board;

(e) amend the first two lines of subsection (c)(2), lines 15-16, to read as follows: "(1) at least 6 representatives appointed by the Secretary from interested federal agencies and other organizations such as—";

(f) amend subsection (c)(3) to read as follows: "(2) at least 5 persons appointed by the Secretary on the basis of outstanding professional qualifications or experience in the disciplines included in the scope of the work of the Center."; and

(g) delete subsection (d), which establishes the terms of the members of the Board.

(7) Section 407, which deals with the issue of regional preservation technology centers, should be amended to make the establishment of such centers permissive and not mandatory, and should reflect the idea of the Center being under the control of the Service. We suggest the following amendments:

(a) subsection (a) should be amended to read as follows: "The Center may establish regional preservation technology centers from among applicants with a demonstrated institutional commitment to the purposes of the Center.";

(b) subsection (b) should be deleted in its entirety;

(c) the first two lines of subsection (c), page 46 lines 9-10, should be amended to read as follows: "(b) Eligible applicants may include—"; and

(d) subsection (d) should be deleted in its entirety.

(8) Section 409 should be amended to remove the authority from the Center to provide grants and loans to regional centers and laboratories or service facilities created by section 407 because the work of the subordinate centers could be adequately performed and funded through contracts and cooperative agreements. Accordingly, we recommend that everything in section 409 after the word "Act" on page 47, line 8 be deleted.

(9) Section 410, which would authorize funds for the Center, should be deleted. Instead, since the Center would be under the Service, the funds should come from that source, and not from a separate authorization.

Section 23—would require a study and report to Congress on the statute of the inclusion of artifacts, records, and material remains within the National Register, and on the advisability of including traditional practices and lifeways in the Register.

Comment: While we do not object to this study, we would like to make it clear that funds to carry it out would be subject to the Department's budgetary priority-setting process. In this vein, we would recommend this section be amended by deleting the phrase on page 47 line 16 "Not later than the end of fiscal year 1993," after replacing it with the phrase "Not later than 3 years after funding is made available."

MINORITY VIEWS OF MR. WALLOP

Although I join the majority in support of the need to address the National Historic Preservation Act, I disagree that this legislation, as reported, is a proper answer to that need. I have concerns that little regard has been shown in this legislation for solving the problems of the people who would be most affected by this legislation, that the process of determining eligibility of properties for the National Register of Historic Places is flawed, that the effects of extending responsibilities under the Act will create costly, overlapping jurisdictions, and will create a veto power over projects.

It is apparent that considerable effort was expended while crafting this legislation to involve National, State, and local historic preservationists, tribal leaders, archaeologists, and architects. As far as I can tell, no one has discussed the effects of this legislation with the homebuilders and homeowners, the agricultural or ranching communities, or the business community in general. It appears that no attempt has been made to build consensus with anyone other than the preservation community.

Basic to the administration of a law such as the National Historic Preservation Act is the ability to sort the truly important sites from the merely interesting sites. The Act does not now contain a process to identify sites, nominate, and then list the important sites. The eligibility criteria found in the Code of Federal Regulations have been written without clear guidance from the law. The National Historic Preservation Act simply does not establish criteria for eligibility. S. 684 makes no attempt to fix this fundamental flaw in the Act.

Under the National Historic Preservation Act and the existing regulations many non-qualifying properties are found eligible and listed every year. The owners of these patently non-qualifying properties have no way to get their properties removed from the eligible list of historic places until they have been included on the Register.

An example of this problem is demonstrated by what recently occurred at Brandy Station in Culpeper County, Virginia, the site of the Civil War's largest cavalry battle. Simply stated, during 1989, lands were identified at Brandy Station that were of national significance. Five areas totaling 250 acres were identified, and proffered as a gift to the Nation.

However, as soon as the county approved the necessary rezoning, the Federal Keeper of the Register declared a 14,000 acre area eligible for the National Register. The designation includes an airport and other clearly inappropriate properties that have long since lost their historic integrity.

Once properties are listed on the National Register, little attention is paid to cost and value in choosing projects to receive Federal monies for restoration. Preservation of some properties defy logic.

An example is the Wesleyan Chapel at Women's Rights National Historic Park in Seneca Falls, New York. At this site some three hundred women gathered in 1848 to hear Elizabeth Cady Stanton present a "Declaration of Sentiments" stating the need for political and economic rights of equality for women. By anyone's standards, a site like this is worth saving.

But, for all practical purposes the building in Seneca Falls, New York, no longer exists. The original congregation moved to a larger building in 1871, the chapel was sequentially converted to an opera house, an automobile showroom, a movie theater, and most recently to a laundromat. Each of these changes took its toll. All that remained of the original structure were two beams, roof supports, portions of two walls, and part of the brick foundation. There also were no records of what it had looked like in the 1800s.

The Park Service held a competition that brought in over 700 entries to "synthesize" the way the building might have looked in 1848. The winning design, an open-air pavilion partially built from the pitiful remnants of the original structure was ultimately incorporated into the Historic Landmark district.

The landmark rebuilds on the site of an important speech a totally fabricated interpretation of how the chapel might have looked. Federal money went to recreate something that we had already effectively lost, while at the same time other important historic landmarks were deteriorating and disappearing.

Part of this problem rests with the complicated overlapping jurisdictions. It is unclear who is responsible for the final decision on how to treat a property, particularly a Federal property. The present law requires the heads of all Federal agencies to assume responsibility for appropriate use and for the preservation of historic properties which are owned or controlled by the agency, and to approve federal permits with respect to private actions.

This legislation has the potential effect of providing an historic preservation veto over any action, public or private, which involves any Federal action. Section 106 of the Act requires that an agency take into account the effect of any undertaking requiring Federal action on any property included in, or eligible for inclusion in, the National Register of Historic Places. The head of an agency is required to afford the Advisory Council on Historic Preservation and opportunity to comment on any such undertaking.

The amendment introduces new language requiring that an agency can go forward with the action only if an additional determination is made that implementing the recommendations of the Council is not "feasible and prudent". This is an unreasonable test.

It would seem to me to be an endless loop to require the agency to determine that the comments of the Council are not "feasible and prudent" when the Council has already found its comments to meet the same test. By the time a project gets to the stage at which the Council has made comments on a consultation, the agency has already evaluated the alternatives, examined all available options, spent budgeted dollars, and made appropriate findings.

What, after all, is "feasible" or "prudent" at this stage of a project? If the preferred agency action is not the best considered course of action at this late stage in a project, I don't know how anyone else will find it. Any other choice may well be overly ex-

pensive, be inconsistent with the charge of the agency, may preserve an historic resource that is already well represented by similar structures, or may simply not be the best use of scarce resources.

Further, if a Federal permit or other approval is required, the applicant has a need to reach resolution for the project. Undue delays, after all other steps have been taken, will in many cases make a project unfeasible. In most cases it is important to allow an applicant to know that additional steps will not be needed, and that the project can proceed because the agency has taken into account the effect of the proposed project.

Moreover, how does the "feasible and prudent" test apply to proposed private action that requires a Federal permit for some small part of the action? Is the "feasible and prudent" test the view of the Council, the agency, or the permit applicant? Where does expense to the private party get considered?

I am also concerned that this legislation will add to regulatory gridlock by creating overlapping authorities on may lands. While this legislation provides appropriate opportunities and responsibilities for Indian tribes and native Hawaiian organizations under the National Historic Preservation Act, it will exacerbate jurisdictional conflicts rather than relieve them.

The definition of tribal lands in this legislation includes, among other things, all lands within the exterior boundaries of any Indian reservations. The tribal historic preservation officer created by this legislation would have control over matters within the boundary of the reservation. The tribe thus could be responsible for approving or conditioning Federal actions affecting State lands or private lands, whether or not the owner wanted such representation.

As an example of how difficult this concept would be to administer for purposes of the National Historic Preservation Act, we need only consider the case of the Nez Perce Reservation in Idaho. According to the Bureau of Indian Affairs records office in Portland, this one reservation contains approximately 1366 parcels of State and fee lands as inholdings. These private lands total more than 95,000 acres. In addition, there are at least 170 acres of Forest Service land in three parcels, and about 18,000 acres of BLM lands in dozens of parcels within the exterior boundary of the reservation.

Finally, I am concerned with the lack of balance. This legislation seeks to go beyond fully considered agency action to a government by gridlock. By providing an effective veto for the Advisory Council, the head of a Federal agency would have to deal only with one interest group. I assume other interest groups such as fish and wildlife, outdoor recreation, and their various subgroups, would also like to have an effective veto rather than merely having their views fully considered.

For these reasons, I will offer an amendment on the floor to Senator Fowler's legislation, S. 684. My amendment will provide guidelines for establishing eligibility of a property for nomination to the Register, will redefine the term "tribal lands", and will remove the burden of making additional determinations by providing the head

of an agency an opportunity to explain to the Council the agency's consideration of the Council comments.

MALCOLM WALLOP.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

AN ACT To establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 1. (a) This Act may be cited as the "National Historic Preservation Act.

(b) The Congress finds and declares that—

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) *historic properties, including prehistoric and historic sites, buildings, districts, structures, and objects, prehistoric and historic archaeological resources, prehistoric and historic roads and trails, and places that have figured in the traditions and lifeways of our communities, of indigenous populations and of the Nation as a whole, are vital links to our past and contribute in major ways to the identity of our Nation and its communities;*

(3) *a national preservation program is achieved by extending Federal Government concern to properties of significance to localities, Indian tribes, Native Hawaiians, States, and the Nation in private and public ownership;*

[(2)] (4) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

[(3)] (5) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

[(4)] (6) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

[(5)] (7) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to

insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

[(6)] (8) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

[(7)] (9) although the major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust of Historic Preservation in the United States to expand and accelerate their historic preservation and activities.

SEC. 2. It shall be the policy of the Federal Government, in cooperation with other nations, and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations; *and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiian organizations, and local governments*

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments, *Indian tribes, and Native Hawaiian organizations* and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

SEC. 101. (a)(1)(A) * * *

(8) *The Secretary shall, at least once every 4 years, in consultation with the Council, make a review in general of threats to properties*

included in or eligible for inclusion on the National Register, in order to—

- (A) determine what kinds of properties may be in particular danger;
 - (B) ascertain the causes of the threats; and
 - (C) develop and submit to the President and Congress recommendations for remedial action where appropriate.
- (b)(1) * * *

• • • • • • •

[(2) Periodically, but not less than every four years after the approval of any State program under this subsection, the Secretary shall evaluate such program to make a determination as to whether or not it is in compliance with the requirements of this Act. If at any time, the Secretary determines that a State program does not comply with such requirements, he shall disapprove such program, and suspend in whole or in part assistance to such State under subsection (d)(1), unless there are adequate assurances that the program will comply with such requirements within a reasonable period of time. The Secretary may also conduct periodic fiscal audits of State programs approved under this section.]

(2) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council and the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with the requirements of this Act. If at any time the Secretary determines that a State program is not consistent with the requirements of this Act, the Secretary shall disapprove the program and suspend, in whole or in part, assistance to the State under subsection (b)(1), unless there are adequate assurances that the program will be made consistent with the requirements of this Act within a reasonable period of time. At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system establishes and maintains substantially similar accountability standards. The Secretary may also conduct periodic fiscal audits of State programs approved under this section.

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to—

• • • • • • •

(G) provide public information, education, and training and technical assistance [relating to the Federal and State Historic preservation programs; and] in historic preservation;

(H) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to subsection (c) [.] ;

(I) consult with appropriate Federal agencies in accordance with this Act on—

(i) Federal undertakings that may affect historic properties; and

(ii) the content and sufficiency of any plans developed to protect or to reduce or mitigate harm to such properties;

(J) advise, assist, and evaluate proposals for rehabilitation projects that may qualify for Federal assistance (including grants, loans, and tax incentives); and

(K) carry out such additional responsibilities as the Secretary, in consultation with the State Historic Preservation Officer determines to be appropriate, consistent with the purposes of this Act.

* * * * *

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of—

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after the date of the enactment of the National Historic Preservation Act Amendments of [1980.] 1992.

(6)(A) Subject to subparagraph (B), the Secretary or the Council may enter into contracts or cooperative agreements with a State Historic Preservation Officer to allow such Officer to carry out their duties within the State in the following areas—

(i) to identify and preserve historic properties;

(ii) to determine the eligibility of properties for listing on the National Register;

(iii) to expand the National Register;

(iv) to maintain historical and archaeological data bases;

(v) to certify eligibility for Federal preservation incentives;

(vi) to comment on, approve, and enforce actions of Federal, State, or local governments, private individuals, and corporations pursuant to this Act, the Internal Revenue Code of 1986, and other Federal law; and

(vii) to exercise such other authority as the Secretary or the Council determines to be appropriate.

(B) The Secretary or the Council may enter into a contract or cooperative agreement under subparagraph (a) only if—

(i) the State Historic Preservation Officer has requested the additional authority;

(ii) the Secretary has approved the State historic preservation program pursuant to section 101(b) (1) and (2);

(iii) the State Historic Preservation Officer agrees to carry out the additional authority in a timely and efficient manner acceptable to the Secretary or the Council, as the case may be;

(iv) the Secretary or the Council agree to provide for a timely review of decisions when requested; and

(v) the Secretary or the Council and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such authority.

(c)(1) * * *

* * * * *

(4) For the purposes of this section the term—

(A) "designation" means the identification and registration of properties for protection that meet criteria established by the

State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and

(B) "protection" means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to subsection (c).

(d)(1)(A) The Secretary shall establish a program to assist Indian tribes and Native Hawaiian organizations in preserving their unique cultural resources. The program shall have as its purpose the preservation, retention, and enhancement of the historic properties and cultural traditions of Indian tribes and Native Hawaiians. The Secretary shall foster communication and cooperation between Indian tribes and Native Hawaiian organizations and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, Native Hawaiian organizations, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

(B) The program under subparagraph (A) shall be developed in such a manner as to ensure that tribal and Native Hawaiian values are taken into account. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal or Native Hawaiian heritage preservation goals and objectives. The tribal and Native Hawaiian programs implemented by specific tribes and Native Hawaiian organizations may vary in scope, as determined by each tribes chief governing authority and Native Hawaiian organizations authorized officials.

(C) The Secretary shall consult with Indian tribes, Native Hawaiian organizations, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (A) by not later than October 1, 1993.

(2) A tribe or a Native Hawaiian organization may assume all or any part of the functions of a State Historic Preservation Officer under subsection (b)(3), together with the concomitant responsibilities under subsections (b) (2) and (3), with respect to tribal land, as such responsibilities may be modified for tribal programs through regulations issued by the Secretary if—

(A) the tribe's chief governing authority or organization's chief executive official so requests;

(B) the tribe or organization designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or the organization's chief executive official or as a tribal ordinance may otherwise provide;

(C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

(D) the Secretary determines, after consultation with the tribe or organization, the appropriate State Historic Preservation Officer, the Council (if the tribe or organization proposes to assume the functions of the State Historic Preservation Officer

with respect to review of undertakings under section 106), and other tribes or organizations, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program—

(i) that the tribal preservation program is sufficient to carry out the functions specified in the plan provided under subparagraph (C); and

(ii) that the plan defines any remaining responsibilities of the State Historic Preservation Officer; and

(E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan.

(3) In consultation with interested Indian tribes, Native Hawaiian organizations, and other Native American organizations and the National Conference of State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) with respect to tribal programs that assume responsibilities under paragraph (2).

(4) At the request of a tribe or Native Hawaiian organization whose preservation program has been approved to assume responsibilities pursuant to paragraph (3), the Secretary shall enter into contracts or cooperative agreements with such tribe or organization, all or any part of the authorities described in subsection (b)(6) on tribal land, if—

(A) the Secretary and the tribe or organization agree on additional financial assistance, if any, to the tribe or organization for the costs of carrying out such authorities;

(B) the Secretary ensures that the tribal historic preservation program is sufficient to carry out the contract or cooperative agreement and this Act; and

(C) the contract or cooperative agreement specifies any continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by—

(i) the tribes' or organizations' traditional cultural authorities;

(ii) representatives of other tribes or organizations whose traditional lands are under the jurisdiction of the tribe or organization to which the Secretary's preservation responsibilities are delegated; and

(iii) the interested public.

(5) The Council may enter into an agreement with an Indian tribe or a Native Hawaiian organization to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106, if the Council, after consultation with the tribe or organization and appropriate State Historic Preservation Officers, determines that the tribal historic preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

"(6) At the request of an Indian tribe or a Native Hawaiian organization whose preservation program has been approved to assume responsibilities pursuant to paragraph (2), and with the concurrence of the Council (after consultation with the affected State Historic Preservation Officer), the Bureau of Indian Affairs, the Indian

Health Service, and other Federal agencies may enter into contracts or cooperative agreements to carry out such part of their preservation functions and responsibilities as the tribe or organization may request on tribal land to the tribal preservation official, or, when a tribe or organization so requests, to the appropriate State Historic Preservation Officer, including any such agency's responsibility to consult with the Council and the State Historic Preservation Officer pursuant to section 106.

"(7)(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

"(B) In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A)."

[(d)(1) The Secretary shall administer a program of matching grants-in-aid to the States for historic preservation projects, and State historic preservation programs, approved by the Secretary and having as their purpose the identification of historic properties and the preservation of properties included on the National Register.]

(e)(1)(A) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act and any other Act affecting historic resources.

(B) The Secretary shall consult with the Council regarding the provisions of grants related to the carrying out of authorities under subsection (b)(6).

* * * * *

(4) The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be waived or Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribes or organizations conducting its responsibilities pursuant to this section.

(5)(A) As part of the program of matching grant assistance to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled "Joint Resolution to approve the 'Compact of Free Association' between the United States and the Government of Palau, and for other purposes" (48 U.S.C. 1681 note). It shall be the goal of the program to ensure at the termination of the Compacts that each Micronesian State has established historic and cultural preservation programs that meet the unique cultural needs of those emerging nations, thus guaranteeing the continuation of the programs. The Secretary may waive or modify the requirements of this section to

conform to the cultural setting of those nations in order to achieve that goal.

(B) The amounts to be made available to the Micronesian States shall be determined by the Secretary on the basis of needs as determined by the Secretary. Matching funds shall not be required.

[(e)] *(f) No part of any grant made under this section may be used to compensate any person intervening any proceeding under this Act.*

[(f)] *(g) In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this title.*

[(g)] *(h) Within one year after the date of enactment of the National Historic Preservation Act Amendments of 1980, the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Service administration, professional standards for the preservation of historic properties in Federal ownership or control.*

[(h)] *(i) The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.*

(j)(1) The Secretary shall, in consultation with other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations develop and implement a comprehensive preservation education and training program.

(2) The education and training program described in paragraph (1) shall include—

(A) new standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;

(B) increased preservation training opportunities for other Federal, State, tribal, and local government workers, students, and individuals with an avocational interest in preservation;

(C) inclusion of provisions in federally-sponsored survey and excavation work to afford an opportunity for the participation of avocational archaeologists;

(D) special assistance to historically black colleges and universities and to tribal colleges and colleges with a high enrollment of Native Americans or Native Hawaiians to establish preservation degree programs;

(E) dissemination of information on preservation technologies;

(F) implementation of a coordinated national informational and media program (such as public service announcements) on preservation topics;

(G) distribution of model preservation curricula for elementary and high schools and adult education programs;

(H) preservation internship programs for United States and foreign students;

(I) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in existing Federal training and development programs; and

(J) support for research, analysis, curation, interpretation, and display related to preservation."

SEC. 102. (a)(1) * * *

[(3) for more than 50 per centum of the aggregate cost of carrying out projects and programs specified in section 101(d) (1) and (2) in any one fiscal year, except that for the costs of State or local historic surveys or inventories the Secretary shall provide 70 per centum of the aggregate cost involved in any one fiscal year.]

(3) for more than 60 percent of the aggregate costs of carrying out projects and programs specified in section 101(b)(3) in any one fiscal year, except that the Secretary may provide additional financial assistance for costs incurred by a State Historic Preservation Officer in carrying out activities pursuant to section 101(b)(6).

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this subchapter to the National Trust for Historic Preservation in the United States[, in which case a grant to the National Trust may include funds for the maintenance, repair, and administration of the property in a manner satisfactory to the Secretary].

(d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.

SEC. 103. (a) The amounts appropriated and made available for grants to the States [for comprehensive statewide historic surveys and plans under this Act] for purposes of this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

(b) [The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States by the Secretary in accordance with needs as disclosed in approved statewide historic preservation plans.]

SEC. 110. (a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are

owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section [101(f)] 101(g), any preservation, as may be necessary to carry out this section.

[(2) With the advice of the Secretary and in cooperation with the State historic preservation officer for the State involved, each Federal agency shall establish a program to locate, inventory, and nominate to the Secretary all properties under the agency's ownership or control by the agency, that appear to qualify for inclusion on the National Register in accordance with the regulations promulgated under section 101(a)(2)(A). Each Federal agency shall exercise caution to assure that any such property that might qualify for inclusion is not inadvertently transferred, sold, demolished, substantially altered, or allowed to deteriorate significantly.]

(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Council and the Secretary and in cooperation with affected State Historic Preservation Officers, tribal preservation programs, and certified local governments, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Each agency shall implement such a program that ensures—

(A) that historic properties under the jurisdiction or control of the agency are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register—

(i) are managed and maintained in a way that reasonably preserves their historic, archaeological, architectural, cultural, and other values; and

(ii) are not inadvertently damaged, disposed of or allowed to deteriorate;

(C) that the preservation, management, and maintenance of such properties not under the jurisdiction or control of the agency, but subject to possible effect are given full consideration in planning;

(D) that the agency's preservation-related activities are carried out in cooperation with historic preservation planning activities of other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector; and

(E) that the agency's procedures for compliance with section 106—

(i) are consistent with regulations issued by the Council pursuant to section 211;

(ii) provide for identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local govern-

ments, Indian tribes, Native Hawaiian organizations, and the interested public, regarding the means by which adverse effects on such properties will be resolved; and

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(c)).

* * * * *

"(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's 'preservation officer' who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section [101(g)] 101(h).

* * * * *

•(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

(l) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register and for which the Federal agency has not entered into an agreement with the Council and the appropriate State Historic Preservation Officer, the head of the Federal agency shall approve the undertaking only if the head of the agency has determined that implementing the recommendations contained in the comments of the Council pursuant to section 106 is not feasible and prudent. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all its parts.

(m) When the Council finds, after consultation with the Secretary, State Historic Preservation Officers, affected Indian tribes, Native Hawaiian organizations, local governments, and the interested public, that a Federal agency's procedures for compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) provide adequately for consideration of properties of cultural and historical significance, including—

(1) the identification of effects on such properties; and

(2) the development and implementation of agreements with affected parties and others regarding the means by which adverse effects will be resolved,

the agency may comply with those procedures in place of regulations promulgated by the Council in order to meet the requirements of sections 106, 110(a)(2), 110(b), and 111 of this Act, as applicable. The Council shall review the procedures of such an agency from time to

time to ensure that they continue to provide adequately for consideration of properties of cultural and historical significance.

"SEC. 111. (a) Notwithstanding any other provision of law, any Federal agency [may, after consultation with the Advisory Council on Historic Preservation, lease] after consultation with the Council, shall establish and implement adaptive use alternatives for historic properties that are not needed for current or projected agency purposes, and may lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

* * * * *

SEC. 112. (a) Each Federal agency that is responsible for the protection of archaeological resources or that conducts, causes to be conducted, or permits archaeological surveys or excavations pursuant to this Act or any other law shall ensure that—

(1)(A) contractors supervising archaeological surveys and excavations meet professional standards under regulations developed by the Secretary in consultation with the Council and other affected agencies, taking into account, and, when appropriate, utilizing the pertinent standards and certification systems of, international, national, State, and local archaeological organizations;

(B) agency personnel supervising archaeological surveys and excavations meet qualification standards established by the Office of Personnel Management, in consultation with the Secretary, in accordance with standards for archaeologists under the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.);

(2) programs for the protection of archaeological resources and for archaeological surveys and excavations are designed, when appropriate, to involve and inform the interested public, including volunteers, professional societies, avocational groups, educational institutions, Indian tribes, and Native Hawaiian organizations;

(3) archaeological surveys and excavations are designed, to the extent feasible, to address research topics of demonstrable significance to the sciences and humanities; and

(4) records and other data produced by archaeological surveys and excavations are maintained in perpetuity in appropriate data bases and disseminated to potential users.

(b) In order to promote the preservation of archaeological resources on private land that are eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to—

(1) provide information to the owners of private lands containing archaeological resources that have a demonstrated or likely research significance, with information about the need for protection of those resources, and the available means of protection;

(2) encourage owners to preserve archaeological resources in place and offer the owners of those resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

(3) encourage the protection of Native American cultural items (within the meaning of section 2 (3) and (9) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 (3) and (9)) and of properties of religious or cultural importance to Indian tribes, Native Hawaiian organizations, or other Native American groups; and

(4) encourage owners who are undertaking excavations to—

(A) conduct excavations and analyses that meet the standards for federally-sponsored excavations established pursuant to this Act;

(B) register artifacts found within the archaeological resource with an antiquities registration program;

(C) donate or lend artifacts of great significance in current or likely research to an appropriate research institution;

(D) allow access to artifacts for research purposes; and

(E) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(a)(2) (B) and (C)), give notice to and consult with such Indian tribe or Native Hawaiian organization.

SEC. 113. (a) In order to facilitate the control of illegal interstate and international traffic in antiquities, the Council, in consultation and cooperation with the Secretary, shall study and report the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

(b) In conducting the study described in subsection (a) the Council shall consult with other Federal agencies that conduct, cause to be conducted, or permit archaeological surveys or excavations and with State Historic Preservation Officers, archaeological organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

(c) Not later than 18 months after the date of enactment of this section, the Council shall submit to Congress a report detailing its findings and recommendations from the study described in subsection (a).

(d) There are authorized to be appropriated not more than \$500,000 for the study described in subsection (a), such sums to remain available until expended.

* * * * *

SEC. 201. (a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation [(hereinafter referred to as the "Council")] which shall be composed of the following members:

(1) a Chairman appointed by the President selected from the general public;

- (2) the Secretary of the Interior;
- (3) the Architect of the Capitol;
- (4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior) the activities of which affect historic preservation, appointed by the President;
- (5) One Governor appointed by the President;
- (6) one mayor appointed by the President;
- (7) the President of the National Conference of State Historic Preservation Officers;
- (8) the Chairman of the National Trust for Historic Preservation;
- (9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archeology, and other appropriate disciplines; [and]
- (10) three at-large members from the general public, appointed by the President [.] ; and
- (11) *one member of an Indian tribe or Native Hawaiian organization appointed by the President.*

* * * * *

SEC. 211. The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 470f of this title in its entirety

* * * * *

SEC. 301. As used in this Act, the term—

(1) "Agency" means agency as such term is defined in section 551 of title 5, United States [Code, except that in the case of any Federal program exempted under section 214, the agency with respect to such program shall not be treated as an agency with respect to such program.] *Code.*

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and [the Trust Territories of the Pacific Island] *the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.*

* * * * *

[(4) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group which is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1701 et seq.).]

(4) "Indian tribe" or "tribe" means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to the Indians because of their status as Indians.

(5) "Historic property" or "historic resource" means any pre-historic or historic district, site, building, structure, or object included in, or eligible for inclusion on the National [Register; such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object.] *Register, including artifacts, records, and material remains related to such a property or resource.*

• • • • •
 [(7) "Undertaking" means any action as described in section 106.]

(7) "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

(A) those carried out by or on behalf of the agency;

(B) those carried out with Federal financial assistance;

(C) those requiring a Federal permit, license, or approval; and

(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(8) "Preservation or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, [maintenance and reconstruction,] *maintenance, study, interpretation, reconstruction, and education and training regarding the foregoing activities, or any combination of the foregoing activities.*

(9) "Cultural park" means a definable [urban area] area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "Historic conservation district" means an [urban area of one or more neighborhoods and] area which contains (A) historic properties, (B) buildings having similar or related architectural characteristics, (C) cultural cohesiveness, or (D) any combination of the foregoing.

• • • • •
 (13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B), and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, [archaeology,] *prehistoric and historic archaeology, folklore and cultural anthropology, or related disciplines, to the extent such professionals are available in the community concerned, and*

• • • • •
 (14) "tribal land" means—

(A) *all lands within the exterior boundaries of any Indian reservation;*

(B) all dependent Indian communities; and

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108), and section 4 of the Act entitled "An Act to provide for the admission of the State of Hawaii into the Union", approved March 17, 1959 (Public Law 86-3; 73 Stat. 5).

(15) "Traditional cultural authority" means an individual in a Native American group, Native Hawaiian, or other social or ethnic group who is recognized by members of the group as an expert on the group's traditional history and cultural practices.

(16) "Certified local government" means a local government whose local historic preservation program has been certified pursuant to section 101(c).

(17) "Cultural resources" means the tangible and intangible elements of traditional culture, including—

(A) historic resources;

(B) American folklife, as that term is defined in section 3(l) of the American Folklife Preservation Act (20 U.S.C. 2102(l)); and

(C) Native American cultural values protected by the American Indian Religious Freedom Act (42 U.S.C. 1996).

(18) "Council" means the Advisory Council on Historic Preservation established by section 201.

(19) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(20) "Native Hawaiian organization" means any organization which—

(A) serves and represents the interests of Native Hawaiians;

(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and

(C) has expertise in Native Hawaiian Affairs, and includes the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

SEC. 302. Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, and, in consultation with the Council, enter into an agreement with the Council, a State Historic Preservation Officer, or a tribal preservation official to carry out the functions of the Federal agency within a State or within tribal land, and may make funds available to the Council, State Historic Preservation Officer, or tribal preservation official for that purpose, except to the extent appropriations legislation expressly provides otherwise.

* * * * *

[SEC. 304. The head of any Federal agency, after consultation with the Secretary, shall withhold from disclosure to the public, information relating to the location or character of historic resources

whenever the head of the agency or the Secretary determines that the disclosure of such information may create a substantial risk of harm, theft, or destruction to such resources or to the area or place where such resources are located.】

SEC. 304. (a) The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may—

- (1) cause a significant invasion of privacy;*
- (2) risk harm to the historic resource; or*
- (3) impede the use of a traditional religious site by practitioners.*

(b) When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

(c) When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

* * * * *

TITLE IV—NATIONAL CENTER FOR PRESERVATION TECHNOLOGY

SEC. 401. The Congress finds and declares that the complexity of technical problems encountered in preserving historic properties and the lack of adequate dissemination of technical information to preserve such properties require a national initiative to coordinate and promote research, disseminate information, and provide training about preservation technologies.

SEC. 402. For the purposes of this title, the term—

- (1) "Board" means the National Preservation Technology Board established pursuant to section 404;*
- (2) "Center" means the National Center for Preservation Technology established pursuant to section 403; and*
- (3) "Secretary" means the Secretary of the Interior.*

SEC. 403. (a) There is hereby established within the Department of the Interior a National Center for Preservation Technology. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

(b) The purposes of the Center shall be to—

- (1) develop and disseminate preservation and conservation technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;*
- (2) develop and facilitate training for Federal, State, and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;*
- (3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;*

(4) coordinate and promote the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector;

(5) serve as a liaison with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums; and

(6) conduct such other activities as may be necessary to fulfill the purposes of this title.

(c) Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through regional centers, laboratories, and service facilities designated or established under section 405.

(d) The Center shall be headed by an Executive Director appointed by the Secretary in consultation with the Board.

(e) The Secretary shall provide the Center with such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

SEC. 404. (a) There is hereby established a Preservation Technology Board.

(b) The Board shall—

(1) provide leadership, policy advice, coordination, and professional oversight to the Center;

(2) advise on priorities and the allocation of funds among the activities of the Center; and

(3) submit an annual report to the President and the Congress.

(c) The Board shall be comprised of—

(1) at least 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, and other public, private, and international organizations; and

(2) at least 5 members appointed by the Secretary on the basis of outstanding professional qualifications or experience in the disciplines included in the scope of the work of the Center.

SEC. 405. (a) The Secretary, in consultation with the Board, shall select regional preservation technology centers from among applicants with a demonstrated institutional commitment to the purposes of the Center.

(b) Such centers, covering regional areas of the United States (as specified by the Secretary, in consultation with the Board), shall develop, coordinate, and implement preservation technology programs consistent with the purposes of the Center.

(c) Eligible applicants may include Federal and non-Federal laboratories, museums, universities, non-profit or for-profit corporations, offices and Cooperative Park Study Units of the National Park Service, State Historic Preservation Offices, and tribal preservation offices.

(d) The Secretary, in consultation with the Board, may establish or designate analytical or technical research laboratories and service facilities to further the purposes of the Center.

SEC. 406. The Center may accept—

(a) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

(b) transfers of funds from other Federal agencies.

SEC. 407. Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public and private entities to carry out the Center's responsibilities under this Act."

(b) Nothing in this section shall affect existing related programs and activities currently undertaken by the National Park Service at Williamsport, Pennsylvania or Monocacy National Battlefield, Maryland.

(c) There are authorized to be appropriated for the establishment, operation, and maintenance of the Center and any regional preservation technology center, such sums as may be necessary.

